

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

PART 2 | A REVIEW OF THE CONTRACTUAL FRAMEWORK

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.

A handwritten signature in black ink, appearing to be 'CD', with a long horizontal stroke extending to the right.

Charles Deguara
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

Report by the Auditor General
December 2021

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List of Abbreviations

AC	agreed costs
AG	Auditor General
ATM	automated teller machine
BOV	Bank of Valletta
CEO	Chief Executive Officer
CfR	Office of the Commissioner for Revenue
CHAC	Cultural Heritage Advisory Committee
COO	Chief Operations Officer
CPSU	Central Procurement and Supplies Unit
DG	Director General
DNO	Development Notification Order
EDP	Excessive Deficit Procedure
ENT	ear, nose and throat
EPC	engineering, procurement and construction
ERA	Environment and Resources Authority
ESA	European System of Accounts
EU	European Union
FGI	Facilities Guidelines Institute
FMS	Foundation for Medical Services
GGH	Gozo General Hospital
HCC	Health Construction Committee
HMC	Health Management Committee
HR	human resources
HSDA	Health Services Delivery Agreement
IAS	Innovative Architectural Structures
ICC	International Chamber of Commerce
ICU	Intensive Care Unit
IT	information technology
ITU	intensive treatment unit
KGRH	Karin Grech Rehabilitation Hospital
KPIs	key performance indicators
MAM	Medical Association of Malta
MANV	Medical Associates of Northern Virginia Incorporated
MBBS	Bachelor of Medicine, Bachelor of Surgery
MCAST	Malta College of Arts, Science and Technology
MDH	Mater Dei Hospital
MEH	Ministry for Energy and Health

MEPA	Malta Environment and Planning Authority
MFH	Ministry for Health
MFIN	Ministry for Finance
MGDD	Manual on Government Deficit and Debt
MIP	Malta Industrial Parks
MITA	Malta Information Technology Agency
MMB	Maintenance Management Board
MOT	Ministry for Tourism
MOU	Memorandum of Understanding
MRI	magnetic resonance imaging
MTCP	Ministry for Tourism and Consumer Protection
NAO	National Audit Office
NGO	non-governmental organisation
NSO	National Statistics Office
OPM	Office of the Prime Minister
OPU	Orthotics and Prosthetics Unit
PA	Planning Authority
PAC	Public Accounts Committee
PAYE	Pay As You Earn
PC	projected costs
PHI	Partners HealthCare International
PMB	Project Monitoring Board
POYC	Pharmacy of Your Choice
PPP	public-private partnership
PS	Permanent Secretary
QAB	Quality and Assurance Board
QMUL	Queen Mary University of London
RfP	Request for Proposals
ROC	Registrar of Companies
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
UK	United Kingdom
USA	United States of America
VAT	value-added tax
VGH	Vitals Global Healthcare

Executive Summary

- 1 On 21 November 2016, the Union *Ħaddiema Magħqudin – Voice of the Workers* and the Medical Association of Malta, 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).

- 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.

- 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).

- 4 Hereunder are the salient conclusions arrived at by this Office regarding terms (d) and (e).

On the negotiation and authorisation of the contractual framework

- 5 The NAO was unable to audit the process of negotiation 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 terms of the concession were determined, the precise role played by those involved in negotiations and whether critical changes were appropriately endorsed.

- 6 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 Ministry for Energy and Health (MEH), the PS of the Health division within the same Ministry, various officials of Projects Malta Ltd and other outsourced third parties, including the Chief Executive Officer (CEO) BEAT Ltd.

- 7 Evident in records retained by the Steering Committee and of concern to the NAO was that Government was not adequately prepared for this concession. Noted was that services that were to be procured were still to be defined even though the Request for Proposals (RfP) had already been issued a month prior.

- 8 The incumbent Minister for Health and the PS Ministry for Health (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 of Tourism (MOT) claimed that certain key stakeholders were intentionally reluctant to cooperate, willing the project to falter.

- 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 an irreparable situation for the Government to manage, whose administrative and political weaknesses were all too readily exploited by the VGH.

- 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. This Office 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.
- 11 A Negotiation Committee was set up by the Steering Committee and was tasked with compiling the draft contractual framework, negotiating on behalf of the MEH, seeking guidance on critical parameters, reporting on progress and seeking authorisation in case of deviations. Chairing the Negotiation Committee was the CEO BEAT Ltd, while a Partner RSM and the Managing Partner Mifsud Bonnici Advocates were its other members.
- 12 The Negotiation Committee failed to retain any records of meetings held with the VGH and copies of draft transaction agreements. Failure on all counts in this respect immediately gave rise to the NAO's gravest concerns. 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 this a severe failure in governance.
- 13 One role fulfilled by the Negotiation Committee was that of interfacing with other working groups. Several concerns emerge in this respect. The first matter of concern related to the involvement of the MEH-Health in the process of negotiation. While the CEO BEAT Ltd maintained that the MEH-Health was directly involved in setting health service requirements through the technical work stream, the PS MFH contended otherwise. Although the PS MFH could not exclude that the process of negotiation 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 when he was excluded from important exchanges.
- 14 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.

- 15 Another matter of concern relates to 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 correspondence reviewed contradicted assertions made by the CEO GGH and the CEO KGRH in testimony provided, particularly in terms of their awareness of and the extent of involvement in the concession.
- 16 The Negotiation Committee also 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.
- 17 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.
- 18 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 involved in this project. This Office was not provided with any evidence of these important aspects of the concession being considered by the Negotiation Committee.
- 19 In a 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.

- 20 The NAO further enquired as to the process of authorisation that regulated the work of the Negotiation Committee during the process of negotiation with the VGH. 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 interpretation of the Negotiation Committee 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.
- 21 On 27 October 2015, Cabinet was then informed by the Minister for Energy and Health that all the main contracts were 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 would be 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.
- 22 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 contracts 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.
- 23 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.
- 24 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 representative of senior management, hence endorsement in this respect was certainly lacking. This was corroborated by the incumbent Minister for Health.
- 25 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.

An analytical review of the contractual framework

Services Concession Agreement

- 26 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 Services Concession Agreement (SCA) on 30 November 2015. 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 including the construction of a medical school and a university-level nursing school. 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. The Agreement stipulated that all rights and obligations arising from it were to be in force between the parties as of the effective date (which occurred on 1 June 2016) and were to continue for a term of 30 years from this date.
- 27 Of concern to the NAO was that Cabinet's authorisation for entry into the two Side Letters to the SCA was sought weeks after these were signed. The two Side Letters served to extend the date by when financing by the VGH was to be secured. 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.
- 28 Key to understanding progress registered in respect of the concession were the records of meetings held by the Health Construction Committee (HCC), the Health Management Committee (HMC) and the Project Monitoring Board (PMB). The NAO established that these three Committees were set up in August 2016 and met in a combined format up to April 2017. What triggered the abrupt cessation of functioning of the Committees remained unclear to the NAO. The NAO understood that the various members appointed to the HCC, the HMC and the PMB were nominated by the Minister within the OPM, his Permanent Secretary and the Executive Chair Projects Malta Ltd.
- 29 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 Ltd were transferred

by its parent company 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.

- 30 No reports regarding 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. 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 reporting on a regular basis as cause for concern.
- 31 Integral to the SCA was the achievement of several concession milestones. These milestones 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 (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 SLH medical tourism beds (31 December 2018).
- 32 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 handover plan, which was submitted to the Government in June 2016. Serious reservations regarding the feasibility of the concession milestones emerge, compounded no less by the VGH's serial inability to secure financing. In the NAO's understanding, 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 the naivety on their part, in the case of others, indicative of gross negligence in fulfilling their responsibilities of office.
- 33 Failure to achieve the concession milestones by the VGH by their stipulated dates was deemed to be a rectifiable concessionaire event of default in the SCA. This Office was informed that a number of such events of default were identified and addressed through continuous discussions with the aim to seek 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.

- 34 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 an allowance for a period of address of the default through a rectification programme and, should the VGH fail to rectify the default, the Government would step in. 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 failures of the VGH to achieve key concession milestones by 30 June 2017.
- 35 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 were 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.
- 36 The SCA stipulated that it was the Concessionaire who was to determine milestone achievement failure penalties and incorporate them in its agreement with the engineering, procurement and construction (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's gravest concerns emerge when considering the provisions stipulated in the SCA as means of redress for circumstances when the concession milestones are 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.
- 37 The SCA regulated the measures that were to be followed in case of the 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. 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. 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.

- 38 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.
- 39 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.
- 40 In the NAO's understanding, the inability to secure financing by the VGH represents the pivotal shortcoming on which rested all subsequent failures registered in this concession by Government. 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 allowed for waiver after waiver of 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.

Health Services Delivery Agreement

- 41 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) on 30 November 2015. 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.
- 42 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 period prior to the completion date is referred to as the transition period in this report. It must be noted that, although the completion date was to be achieved by 31 December 2018, at the time of reporting, that is, December 2021, this had not yet been realised.
- 43 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.
- 44 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. 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.
- 45 Considering the additional charges arising from pharmaceuticals in excess of the capped amount, the dermatology outpatient centre, the lease of the Barts Medical School Campus at the GGH and the air ambulatory service, the minimum service delivery fee payable by Government as regulated by the HSDA stood at an annual €72,856,500. The minimum charge and the other charges outlined were to be increased annually by an amount equal to the highest of either two per cent or the Consumer Price Index.
- 46 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. In the NAO's understanding, the Addenda to the HSDA 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. The NAO contends that the Government failed 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.

- 47 A third Addendum to the HSDA was entered into by the Government and VGH Management Ltd on 30 June 2017. 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. 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. 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. 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.
- 48 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 Quality and Assurance Board (QAB). 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.
- 49 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. Although in a meeting with the NAO the MFH disputed that recorded in the minutes, this Office was not convinced of the change in stance and 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.
- 50 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. 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 Mater Dei Hospital (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.

- 51 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.
- 52 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.
- 53 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.
- 54 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 and therefore in the provision of appropriate services. The MFH attributed the insufficient depth of detail in the HSDA to the short timeframe and excessive haste within which the Agreement was drafted. The Ministry 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. Having considered the context of the concession, the NAO deems the concerns flagged by the MFH as valid.
- 55 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.

- 56 Aside from the provision of new services, the VGH also had to undertake refurbishment works and upgrades to better support the demand for services. The MFH stated that no major refurbishment was carried out and noted that while the GGH was aesthetically improved, major development works were lacking. The several instances of failure on the part of the VGH to refurbish existent facilities were deemed a matter of concern by the NAO.
- 57 Similar shortcomings in progress were registered in relation to other aspects of health service delivery. One could cite the failure to expand surgical suite facilities, to deliver new treatments at the urology department and new services within the obstetrics and gynaecological ward as examples of the VGH falling short on delivering that contracted for the GGH.
- 58 While the clinical grounds for the removal of certain services, such as the paediatric intensive care and trauma unit, 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.
- 59 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. 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.
- 60 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 new OPU set up was also raised as a point of note by the Ministry.
- 61 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.

- 62 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.
- 63 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 reflection of its grave ineptitude in governance, for the Concessionaire was immediately and evidently not fit for purpose.
- 64 The HSDA stipulated a schedule of payments to be effected until the completion date was reached. The NAO verified whether payments were made by the MFH in accordance with the contractual framework. 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. The MFH informed the NAO that the budgetary increases were eventually halted since the transition period was repeatedly extended.
- 65 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.
- 66 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.
- 67 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.

68 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 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.

69 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 Central Procurement and Supplies Unit (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. The NAO established that the €1,800,000 cited in the HSDA as the capping for pharmaceuticals and medical supplies to be paid for by the VGH 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 lamented that these direct costs ought to have featured in the HSDA budget but were not and instead, the Government was paying for all medicinal consumption during the transition period while the VGH covered none of the costs incurred. 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

- 70 On 7 December 2015, the Government and VGH Management Ltd 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. 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.
- 71 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. 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. The NAO's concerns with respect to this Agreement 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

- 72 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 Labour Supply Agreement (LSA). Through this Agreement, 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. The conditions of service of the employees supplied by the Government to VGH Management Ltd, including any wage increases, were to be those applicable to them as public officers and public servants.
- 73 VGH Management Ltd was to be charged by the Government the equivalent of the monthly basic salary, applicable allowances and bonuses of every employee leased to it by the Government. 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.
- 74 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.

- 75 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 human resources. Also payable by the Government was a charge of €1,282,000 in respect of sub-contracted resources.
- 76 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. 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.
- 77 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.
- 78 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.
- 79 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.

80 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 was 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.

81 As from 1 June 2016, responsibility for the provision of ancillary services such as cleaning, security and support 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. 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.

82 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. The first invoice issued by the VGH, entirely related to staff movements in terms of the LSA, corresponding to the period June 2016 to December 2017 and amounting to €3,832,122, was contested by the MFH for several reasons, including: discrepancies in the list of resources; the lack of documentation provided by the VGH; and the invoice being based on estimates of wages rather than accurate figures.

83 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.

- 84 The matter remained a contentious issue with claims and counterclaims exchanged between the Government and the VGH resulting in eventual referral to mediation. 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. The Government acknowledged the basis for the claim considering its contractual obligations to reimburse the VGH for the costs of replacement resources (resources provided by the Government to fill vacant posts created by departing leased resources) and appointed an external auditor to quantify amounts due. The external auditor established the amount payable as €4,866,431. The MFH informed the NAO that in 2019, the Government agreed to pay the cost as established by the external auditor.
- 85 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.
- 86 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. 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. Furthermore, the payment allowed the Government to limit the legal interest due.
- 87 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 human 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.
- 88 The design of the LSA created unnecessary tension between the MDH and the GGH, which previously operated in tandem with the latter utilising resources and services from the former as required. The MFH considered the separation and isolation of the two hospitals as a major flaw in the design of the LSA that exacerbated labour supply difficulties and constraints. 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.

- 89 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.
- 90 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.
- 91 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.
- 92 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

- 93 On 22 March 2016, the CEO Malta Industrial Parks (MIP) Ltd, the Commissioner of Land and the Director VGH Assets Ltd, entered into the Emphyteutical Deed. 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. VGH Assets Ltd could request to

extend the 30-year 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 charged 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.

- 94 The NAO sought to understand the mismatch between the 30-year concession period and the potential 99-year title granted over the sites. This Office'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 to promote medical tourism, 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.
- 95 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 also applying increases of five per cent every five years 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 (extension of the term triggered by the VGH) and resulted in less revenue overall for Government. 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.
- 96 The NAO 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. This Office 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.
- 97 The NAO compared the contracted ground rent site dimensions and the computed amounts based on footprints provided by the Lands Authority. When considered over the span of the Emphyteutical Deed, a variance adverse to Government amounting to approximately €900,000 was noted. This Office 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.

98 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.

99 In addition, the NAO sought to establish whether the vacant possession of the sites 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.

Comparison of the contractual framework with the Request for Proposals

100 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. This analysis was undertaken to assess whether the contractual framework was consistent with the provisions of the RfP.

101 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.

102 In contrast with the Emphyteutical Deed, in the RfP potential bidders were not provided with security regarding the extension of the emphyteutical title for an additional 69 years. 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.

- 103 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 the 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.
- 104 In the NAO's 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.
- 105 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.
- 106 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.

107 Substantial deviations were also noted between the RfP and the SCA with respect to the stipulated timeframes for the completion of works. 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.

108 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.

109 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. This Office 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.

110 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.

111 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.

- 112 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.
- 113 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.
- 114 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 and the extent to which the concessionaire was to bear extra costs relating to resulting increases in salaries. Noted in the Addendum to the LSA was that the VGH would only cover an annual two per cent of salary increases. 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.

Comparison of the Vitals Global Healthcare bid with the contractual framework

- 115 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.

- 116 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.
- 117 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.
- 118 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.
- 119 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. 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, for it was through these partnerships that the VGH secured technical expertise.

The classification of the project as on-balance sheet

- 120 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.
- 121 In December 2016, the National Statistics Office (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. First was the minimum service delivery fee, which was a form of Government guarantee of a minimum revenue to the VGH irrespective of service usage. The second concerned termination payments in the case of a VGH event of default, where the

Government would be responsible for the payment of any concessionaire debt. 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, and the fact that the Government retained the risk of maintaining the required level of resources and collective agreement negotiations.

- 122 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; financing and refinancing clauses; the fact that the Government bore the risks related to any general changes in law going beyond the contractual provisions; 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.
- 123 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.
- 124 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.

On the financial position of the Vitals Global Healthcare group

- 125 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. 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.

- 126 Of great concern to this Office were the statements 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.
- 127 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.
- 128 Serious concerns regarding the regularity of use of funds provided by the Government were highlighted by the 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.

- 129 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.
- 130 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.

Chapter 1 | Deciphering the contractual framework

1.1 The scrutiny of a contested concession

- 1.1.1 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) (Appendix A refers). 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).
- 1.1.2 Further correspondence regarding the matter was submitted by the Government members on the PAC on 5 December 2016 (Appendix B refers) and by the Opposition members on the PAC on 8 January 2018 (Appendix C refers).
- 1.1.3 On 16 January 2018, 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 in correspondence addressed to the Chair PAC (Appendix D refers). The terms consisted of the following:
- a review the method utilised for the award of the concession to the 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:
 - i verify whether services provided adhered to contract requirements;
 - ii verify whether contractual targets relating to the redevelopment, maintenance, management and operation of the sites have been realised;
 - iii review provisions regulating the labour rights of public officials in relation to the concession; and
 - iv 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.

1.1.4 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 the report, published in July 2020, focused on the procurement process leading up to the award of the concession to the VGH, and therefore addressed terms (a) to (c). It was complemented by an addendum, also published in July 2020, which focused on a memorandum of understanding (MoU) submitted to the NAO by the Office of the Prime Minister (OPM) shortly after the publication of the first part of the report. In turn, this part focuses on the contracts entered into by Government and the VGH, as well as their implementation until the eventual transfer to Steward Health Care, thereby addressing terms (d) and (e). Finally, the third part of the report will focus on the transfer of the concession by VGH to Steward Health Care and will address term (f).

1.2 Revisiting the tender process

1.2.1 This section of the report summarises the key findings of the first part of the report and the subsequent addendum thereto.

1.2.2 In the first part of the report, the NAO noted that the Agreement that the parties representing Government reportedly entered into prior to the request for proposals (RfP) with a subset of the investors of the VGH had drawn the Office's immediate concern in relation to the method utilised for awarding the concession to the VGH. The overlap between this Agreement and the concession was clear and generated major doubt and concern regarding the integrity of the concession. The NAO's concerns were heightened considering Government's reluctance to provide this Office with a copy of the Agreement. In its first report, this Office stated that it believed that this Agreement provided grounds for the disqualification of the VGH from the RfP.

1.2.3 Significant failures were also noted in developments leading to the issue of the RfP. The Health division within the Ministry for Energy and Health (MEH) was not appropriately involved, with the Energy division driving the process in its stead. Furthermore, the Ministry for Finance (MFIN) was not consulted regarding the disbursement that was to result from the concession, while the authorisation of Cabinet was likewise not sought prior to the issuance of the RfP. Of greater concern in terms of the governance of the process was that no ministerial authorisation was sought or provided, resulting in the anomalous scenario where three public hospitals were granted for operation by third parties without anyone assuming responsibility for this decision.

1.2.4 The NAO further concluded that the feasibility assessment in relation to the project, which ought to have established the basis for Government's decision to grant the hospitals, was bereft of any form of independent analysis or critical thought. Additionally, several shortcomings were noted in the design of the RfP, most significant of which was the subjectivity of the evaluation criteria and the term set for the concession, which should have been established based on analysis and not in the arbitrary manner that it was.

- 1.2.5 Another aspect of the process addressed by the NAO was the determination of whether the business model to be employed by the concessionaire was feasible and whether it represented value for money. Although the bid submitted by the VGH satisfied all the requirements set by Government, this Office believed the bid was essentially robust in form but flawed in substance. Of grave concern to the NAO was documentation submitted by the VGH as proof of access to finance. A letter issued by the Bank of India sanctioning funding for the “Malta Healthcare Projects” and put forward by the VGH in respect of the bid was dated 13 March 2015, that is, prior to the publication of the RfP on 27 March 2015. This Office deemed this document as definite evidence of the VGH’s prior knowledge of the planned project and proof of collusion with Government or its representatives.
- 1.2.6 Other notable shortcomings identified by the NAO related to the professional and technical elements of the bid submitted by the VGH. This Office noted that the business experience cited by the VGH was not attributable to it but to the holding company Oxley Group or to its strategic partners, or to partners that the VGH had involved in the project. Of note was that the experience cited for Oxley Group mainly related to real estate investment trusts and funds, asset management and financing.
- 1.2.7 Furthermore, the timeframes committed by the VGH for the redevelopment of the hospitals were evidently overly ambitious and unrealistic. Similarly overly ambitious were the projections made regarding medical tourism, particularly when one considers that it was the revenue forecasted from this source that was to render the project feasible.
- 1.2.8 The bid by the VGH was assessed by the Evaluation Committee in terms of its commercial, technical and financial strength, and the degree to which it exceeded the minimum requirements specified in the RfP. In this Office’s opinion, the evaluation carried out lacked critical analysis, with several parts of the evaluation report merely a restatement of the bid submitted by the VGH. Furthermore, the NAO maintained that the marks assigned in relation to the technical and operational component of the evaluation were not completely merited. Concerns emerged regarding the Evaluation Committee’s assessment of the financial soundness of the VGH, its professional and technical qualifications and management experience, the key financial assumptions that underpinned the viability of the project and cost comparisons between rates proposed and actuals incurred by Government.
- 1.2.9 Further noted in the first part of the report was that although the shortcomings identified by the NAO in relation to the evaluation process remained, these were to be acknowledged in terms of the broader and far more significant concerns relating to the integrity of the entire procurement process. The evidence indicating collusive action between the parties acting on behalf of Government with the investors of the VGH rendered the entire process dubious, irrespective of whether the process adhered to procedural and regulatory requirements.

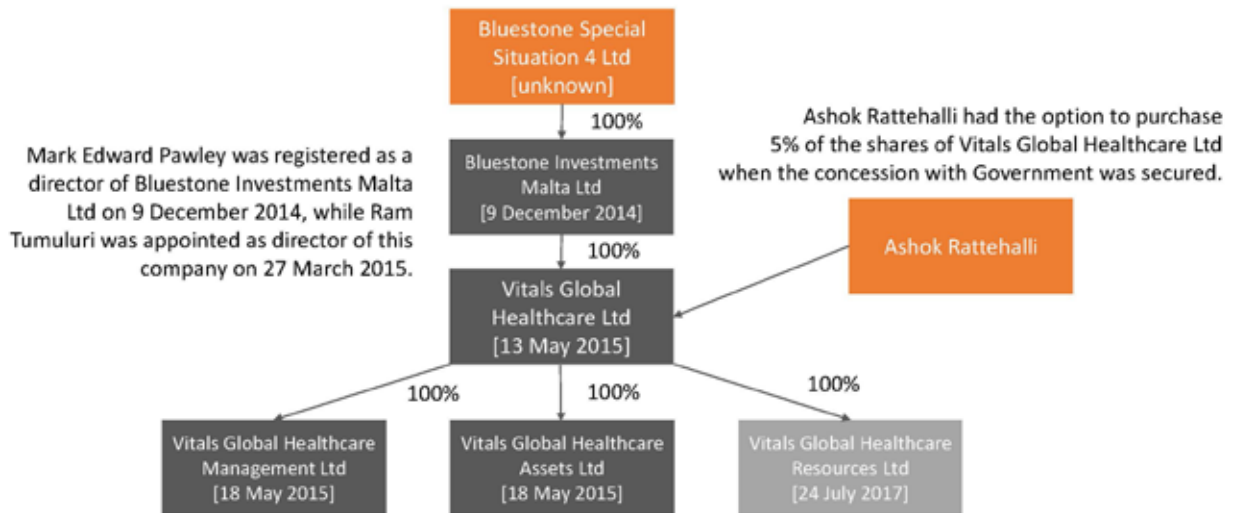
- 1.2.10 The NAO also maintained that, beyond the assertion of compliance to administrative requirements and the determination of whether the technical criteria set out in the RfP were met and to what extent, it was reasonable to expect that the evaluation process would include an element of due diligence on any bidder. This Office noted that in its opinion the due diligence carried out by Government to verify matters relating to the VGH in its capacity and relationship to it as the preferred bidder was grossly inadequate.
- 1.2.11 An addendum complemented the first part of the audit and focused on an MoU submitted to the NAO by the OPM on 14 July 2020, shortly after the publication of the first part of the report. The memorandum, dated 10 October 2014, was signed by Government, represented by the Hon. Christian Cardona, then Minister for the Economy, Investment and Small Business (hereinafter referred to as the Minister for the Economy), and the developers and operators of the proposed project, represented by Mr Mark Edward Pawley in his capacity as Director of Bluestone Special Situation 4 Ltd, Dr Ashok Rattehalli in his capacity as Director of AGMC Incorporated and Mr Mohammad Shoaib Walajahi and Mr Chaudhry Shaukat Ali in their capacity as Directors of Pivot Holdings Ltd (collectively referred to as the Investors). Acknowledged in the MoU was that the Investors were interested in investing in the setting up of a Gozo Medical Complex, which comprised the extension and operation of the GGH, the construction and operation of an assisted living centre, as well as the construction of a medical school to be operated by Barts and the London School of Medicine and Dentistry.
- 1.2.12 It was noted in the addendum that after reviewing the MoU, the NAO affirmed that all findings and conclusions reached in the first part of the report remained unchanged, with concerns highlighted therein substantiated by the facts brought to the fore. Furthermore, the NAO stated its opinion that the MoU and the subsequent RfP relating to the concession of three public hospitals could be considered as one process. First, there existed significant overlap between the investors that entered into the MoU with Government and the owners of VGH, the company that Government subsequently awarded the concession to. Second, the nature of the project remained unchanged as the refurbish and operate model was retained, revenue by Government always guaranteed in the envisaged long-term agreements, medical tourism underpinned feasibility, and the construction of Barts Medical School remained a central requirement throughout. The only major difference was the reduction in the intended number of beds at the GGH, which reduction was more than compensated for through the inclusion of the SLH and the KGRH. The overlap in terms of the nature of the project and the identity of the investors was evident and strongly supported this Office's understanding of a process that was staged and deceitful.

1.2.13 Although the MoU provided an insight into certain developments that took place prior to the RfP, multiple gaps persist, the most notable of which related to the identification of the investors, the negotiations held leading to the MoU and the negative outcome of the due diligence undertaken by Malta Enterprise with respect to the investors. Despite the lack of visibility afforded to this Office regarding the nature of the negative outcome of the due diligence, the NAO's concerns emerge when one considers that, irrespective of the critical risks flagged, Government persisted in negotiations with investors that, for the most part, remained unchanged when granting a concession to operate three public hospitals a few months later.

1.3 Understanding Vitals Global Healthcare

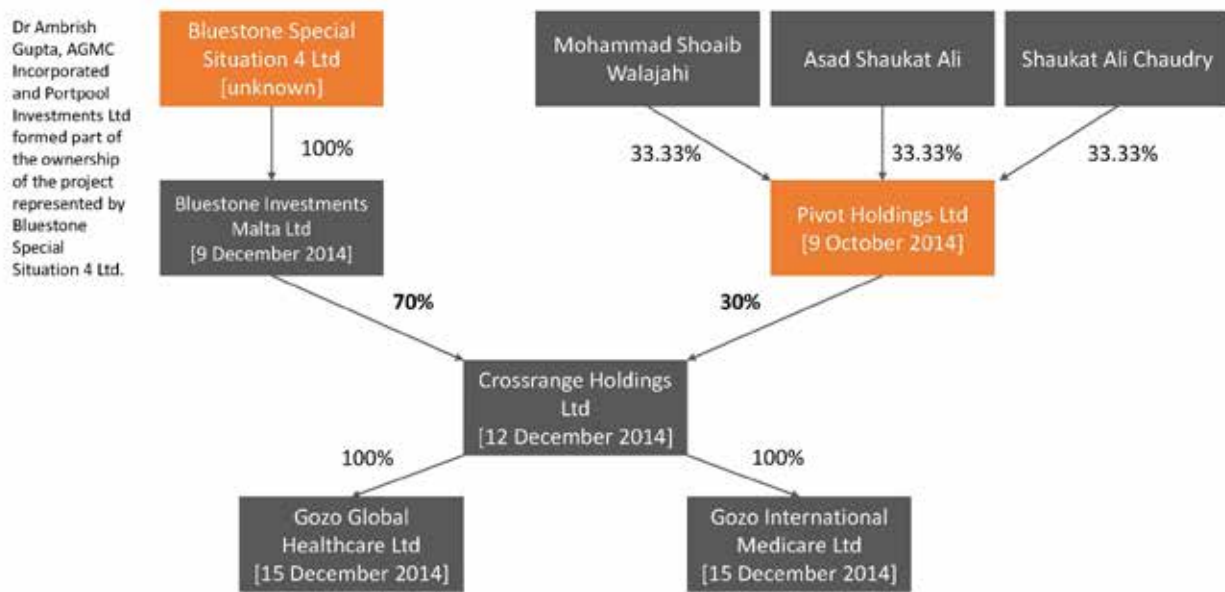
1.3.1 At the time of the award of the concession, VGH Ltd was owned in its entirety by Bluestone Investments Malta Ltd. Bluestone Investments Malta Ltd was registered in Malta on 9 December 2014 and was solely owned by the British Virgin Islands-registered company, Bluestone Special Situations 4 Ltd. At registration, the director and legal and judicial representative of Bluestone Investments Malta Ltd was noted as being Mark Edward Pawley, who at the time, was also the Chief Executive Officer (CEO) of Oxley Capital Group. Ram Tumuluri was appointed director and legal and judicial representative of Bluestone Investments Malta Ltd with effective date 27 March 2015. Also of public knowledge is that during the RfP process for the award of the concession of the three public hospitals, that is, on 12 May 2015, Bluestone Investments Malta Ltd entered into an agreement with Dr 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. VGH Ltd was also registered during the RfP process, on 13 May 2015, and its directors and legal and judicial representatives were Mark Edward Pawley and Ram Tumuluri. VGH Ltd fully owned three other companies, that is, VGH Management Ltd, VGH Assets Ltd and VGH Resources Ltd. The former two, with Mark Edward Pawley and Ram Tumuluri acting as directors and legal and judicial representatives, were registered on 18 May 2015, one day prior to the RfP deadline. Meanwhile, VGH Resources Limited was registered on 24 July 2017 and its director and secretary was Ram Tumuluri. Figure 1 depicts the corporate structure of VGH Ltd as at concession award.

Figure 1 | Vitals Global Healthcare Corporate Structure as at the concession award



- 1.3.2 Figure 2 depicts the corporate structure set up in relation to the investment in the project as per the MoU dated 10 October 2014. In this respect, Bluestone Investments Malta Ltd holds 70 per cent of the shareholding of Crossrange Holdings Ltd, registered in Malta on 12 December 2014. Mark Edward Pawley and Mohammed Shoaib Walajahi are the joint legal and judicial representatives of Crossrange Holdings Ltd.
- 1.3.3 The remaining 30 per cent of the shareholding of Crossrange Holdings Ltd is owned by Pivot Holdings Ltd, which was incorporated on 9 October 2014. The shareholders and directors were originally Mohammed Shoaib Walajahi (50 per cent ordinary ‘A’ shares) and Shaukat Ali Chaudry (50 per cent ordinary ‘B’ shares). On 16 October 2014, Sarwat Shoaib Walajahi and Aasia Parveen Shaukat (or Aasia Shaukat Ali) were appointed directors of the company. On 6 March 2015, Asad Shaukat Ali was appointed director of the company and became a shareholder of the company (with each shareholder now having 33.33 per cent of the shares), while Mohammed Shoaib Walajahi and Sarwat Shoaib Walajahi resigned from directors and legal and judicial representatives.
- 1.3.4 Crossrange Holdings Ltd is the shareholder of two further Maltese registered companies: Gozo Global HealthCare Ltd, and Gozo International Medicare Ltd, both incorporated on 15 December 2014, prior to the issue of the RfP. The directors for both companies are Mark Edward Pawley and Mohammad Shoaib Walajahi.

Figure 2 | Corporate structure relating to the investment in the project as per the MoU dated 10 October 2014



1.4 Methodological considerations

1.4.1 This audit was undertaken in accordance with article 9(a) of the First Schedule of the Auditor General and National Audit Office Act (Act XVI, 1997) and in terms of practices adopted by the NAO. Other legislation reviewed included the Civil Code (Chapter 16), the Commissioner of Land Ordinance (Chapter 169), the Disposal of Government Land Act (Chapter 268), the State Aid Monitoring Regulations (Subsidiary Legislation 325.07) and the Value Added Tax Act (Chapter 406). Also central to this audit was ISSAI 5220, titled 'Guidelines on Best Practice for the Audit of Public/Private Finance and Concessions', which provided a framework against which this enquiry could be set. In reviewing the classification of the project as on- or off-balance sheet, reference was made to the European System of Accounts (ESA) (2010), the Manual on Government Deficit and Debt (MGDD), Implementation of ESA 2010 (2016), and the document titled A Guide to the Statistical Treatment of Public Private Partnerships (PPPs) (2016).

1.4.2 Findings presented in this report are based on the documentation submitted to the NAO. In this regard, queries were directed to:

- a the Ministry for Health (MFH), which stakeholder provided this Office with information relating to the implementation of the operational aspects of the contracts entered into by Government with respect to this concession;
- b the Ministry for Tourism and Consumer Protection (MTCP), which Ministry had direct responsibility for Projects Malta Ltd. Information sourced from the MTCP mainly related to the Ministry's role (under previous forms), or that of its subsidiaries, in the negotiations relating to the concession and the implementation of the capital aspects of the project;

- c Projects Malta Ltd, which entity was deemed a key stakeholder with respect to the concession awarded to the VGH for the sites at the SLH, the KGRH and the GGH;
- d Cabinet Office, which Office provided the NAO with memoranda and meeting minutes that provided insight into the process of authorisation for the concession;
- e the Lands Authority and Malta Industrial Parks (MIP) Ltd, whose role mainly related to the granting of the sites to the VGH;
- f the Negotiation Committee, which was tasked with bringing to a close the contractual framework that was to regulate the concession, and the Technical Work Stream, which was responsible for setting the health service requirements corresponding to this concession;
- g the Ministry for Finance (MFIN), with the NAO seeking to establish its level of involvement in this concession and its views on the impact of this project on public finances;
- h the National Statistics Office (NSO), with specific attention directed towards their assessment of the project as on- or off-balance sheet; and
- i other entities, namely, the OPM, the Office of the Attorney General, Malta Enterprise, the State Aid Monitoring Board, the Office of the Commissioner for Revenue and the Malta Business Registry.

1.4.3 Of concern to the NAO was that Malta Enterprise failed to cooperate with the NAO by refusing to reply to requests for information submitted by this Office to it. 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 (Chapter 436 of the Laws of Malta) and the Business Promotion Act (Chapter 325 of the Laws of Malta). Further noted by Malta Enterprise was that, even in the case of requests by the NAO, 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 advised that the information being requested by the NAO was not necessary for the purposes of verifying the accounts of Malta Enterprise.

1.4.4 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 constituting in any way a breach of the Malta Enterprise Act and the Business Promotion Act. For purposes of context, the NAO sought documentation relating to:

- a the setting up of a committee that was to oversee part of the requirements of the concession;

- b progress being registered in relation to certain requirements of the concession, particularly in relation to the Barts Medical School; and
- c an agreement entered into between Government and the VGH regarding the title of lease for the Barts Medical School.

1.4.5 Aside from documentation reviewed, the NAO held interviews with persons who were involved in the negotiations and contract drafting process leading to the agreements entered into by Government and the VGH and the implementation of these contracts. Interviews were held with the Deputy Prime Minister, the Hon. Chris Fearne (referred to throughout this report as the Minister for Health) and several senior officials within the MFH, namely, the Permanent Secretary (PS), the Director General Finance and Administration, the Financial Controller and Advisors. Other interviews held by this Office were with the PS MTCP (referred to as PS Ministry of Tourism (MOT) throughout the report) and with the Chair and a Member of the Negotiation Committee. In addition, the NAO met with the Executive Director and President of Steward Health Care Malta (referred to as the CEO GGH throughout the report) and the Executive Director Karin Grech Hospital (referred to as the CEO KGRH throughout the report). All the interviews held were transcribed by the NAO and a copy submitted to the interviewees, who were requested to endorse the transcript and submit clarifications, if required.

1.4.6 An attempt was also made to schedule a meeting with another member of the Negotiation Committee, Dr Aron Mifsud Bonnici. However, Dr Mifsud Bonnici was unwilling to accept this Office's request for the meeting, citing professional ethics. Reference to professional ethics guiding Dr Mifsud Bonnici in this matter was understood by this Office as relating to his inability to disclose information concerning the legal advice provided to his client, in this case, the then Ministry for Energy and Health. The NAO highlighted that its meeting agenda on the matter mainly related to the processes and procedures adopted by the Negotiation Committee in its representation of Government in negotiations with the VGH and was not intended to impinge on the legal advice that Dr Mifsud Bonnici may have provided to Government. Despite this clarification, no response was received and consequently, no meeting was held between the NAO and Dr Mifsud Bonnici.

1.4.7 The NAO also sought the views of Ram Tumuluri regarding this concession. Several attempts to contact Ram Tumuluri proved to no avail, as no reply was forthcoming. Confirmation of receipt of emails sent by this Office to Ram Tumuluri's address was received.

1.4.8 Of grave concern to the NAO were the futile attempts made by this Office to meet with the Hon. Konrad Mizzi. In this case, the several requests for meetings sent by this Office, by email and by registered post, remained unaddressed. The NAO confirmed the receipt of the various requests sent by this Office to Hon. Mizzi.

- 1.4.9 As a general rule, public officers cited throughout the report, unless otherwise specified, are referred to by their designation at the time reported on. Circumstances that constrained the NAO from reporting in this manner mainly related to instances when either roles of officials cited or reporting structures changed during the period being reported on. A case in point is that of the Hon. Konrad Mizzi, who for the initial part of the concession under review held the office of Minister for Energy and Health and later that of Minister within the OPM, prior to assuming office as Minister for Tourism. The latter designation was utilised when referring to this Minister throughout the report, except for instances when the Minister for Tourism represented Government in the contracts reviewed in some other capacity. Furthermore, reference to the concessionaire in its broadest sense is often times made using the term VGH. This was intended to facilitate the readability of the report and is not to be construed as an imprecision in relation to the contractual framework entered into.
- 1.4.10 An element of clarification is also warranted about the Ministry for Energy and Health. The structure of this Ministry requires explanation, for its dichotomous nature, with 'Energy' on one side and 'Health' on the other, assumed pivotal importance in the way this project developed. Although the functions of energy and health were assimilated into one ministry, this Office is of the understanding that for all intents and purposes, two ministries operated in parallel. The Ministry was led by the Hon. Konrad Mizzi as Minister for Energy and Health, and supported by the Parliamentary Secretary for Health, the Hon. Chris Fearne. Two PSs oversaw the functioning of the Ministry, one assuming responsibility for its energy-related function and the other for its health-related function. In the first part of its report on this concession, the NAO referred to these officials as PS MEH-Energy and PS MEH-Health, respectively, consistent with their role as reported on in the period under review. Following changes in ministerial portfolios in 2016 and 2017, the PS MEH-Energy experienced parallel changes in role. At the end of the period being reported on, he occupied the role of PS MOT and is referred to in this manner throughout this report. The PS MEH-Health eventually assumed the role of PS within the then newly formed Ministry for Health and is therefore referred to as PS MFH.
- 1.4.11 In line with its guiding principles of independence, fairness and objectivity, the NAO sought to ensure that all information brought to its attention was duly scrutinised and the resulting findings objectively reported on. The relevant documentation and information required were, in most cases and to the best of the NAO's knowledge, made available to this Office by the various parties. The NAO's findings and conclusions are based solely and exclusively on the evaluation of such documentation and information supplied, and the evidence at its disposal. The NAO sought to identify any possible shortcoming or irregularity and put forward recommendations essentially meant to ensure that the optimal use of public resources.

Chapter 2 | An analysis of the negotiation process

2.1 Understanding the process of negotiation

2.1.1 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. The NAO understood that the award of the concession would be followed by entry into a contractual framework that would regulate the roles, responsibilities and obligations of all parties involved. Moving from that sought by Government through the RfP and that bid by the VGH to the contractual framework required a process of negotiation.

2.1.2 The NAO sought to understand the specifics of the negotiations undertaken by Government with the VGH. Of particular interest to this Office was establishing who was tasked with negotiating on behalf of Government, undertaking a review of the documentation retained, and ascertaining 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.

2.1.3 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 role played by those involved in negotiations and whether critical changes were appropriately endorsed by the relevant authorities. Through the rest of this chapter, the NAO seeks to provide its understanding of the process of negotiations based on the glimpses of information made available to it.

Steering Committee proceedings

2.1.4 An important element of context to the negotiations is provided by the Steering Committee, which oversaw the concession as a whole, gave strategic direction and monitored actions. As outlined in Part 1 of this report, 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 PS MEH-Energy (referred to elsewhere in this report as the PS MOT) and an official within his Office, the PS MEH-Health (referred to elsewhere in this report as the PS MFH), various officials of Projects Malta Ltd, including their Executive Chair and Chief Operations Officer (COO), as well as other outsourced third parties. 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 COO of BEAT Ltd.

- 2.1.5 The PS MOT elaborated on how the administration of the Steering Committee was entrusted to BEAT Ltd and explained the roles of several members of the Committee. The COO BEAT Ltd was responsible for setting up meetings, drafting minutes, formulating action to be undertaken and the milestones to be reached, as well as obtaining information and updates. The PS MOT further noted that an official from the secretariat of the Minister of Energy and Health, whose role involved ascertaining whether any milestones were reached for public relations purposes, infrequently attended the Steering Committee meetings. The other Ministry official who attended the meetings served as a backup to the PS MOT. According to the PS MOT, the Projects Malta Ltd officials supported the process and provided information on the disposal of public land, while the role of the Director of Innovative Architectural Structures entailed the oversight of technical issues related to the construction and the works to be undertaken. The Partner RSM, the Managing Partner and Partner Mifsud Bonnici Advocates and the CEO BEAT Ltd were involved in the negotiation of the agreements. Elaborating on his role within the context of the Steering Committee, the PS MOT indicated to the NAO that his involvement was limited to the facilitation of the process through the preparation of Cabinet memoranda and the appointment of consultants when required. Additionally, the PS MOT indicated that he kept abreast of developments, facilitated bottlenecks that arose throughout the process, such as expropriation issues, and approved required direct contracts. However, the PS MOT clarified that he was not directly involved in any negotiations.
- 2.1.6 Of interest to the NAO was the role played by MEH-Health representatives in the Steering Committee. The CEO BEAT Ltd and the Partner RSM maintained that the Steering Committee included representatives from the MEH-Health and that the PS MFH was always invited to attend. The PS MOT similarly asserted that representatives of the MEH-Health were present for certain Steering Committee meetings. In contrast, the PS MFH declared that he was invited to attend a Steering Committee meeting on one occasion; however, this invitation had not been extended to his financial and clinical experts. Of note to this Office was that the PS MFH recalled expressing reservations regarding several issues associated with the project during the Steering Committee meeting that he attended. Following this meeting, the PS MFH indicated that he was never extended an invitation to attend another meeting of the Steering Committee. The PS MFH could not explain why records of the Steering Committee indicated more regular attendance on his part when this was not the case.
- 2.1.7 Requests for letters of appointment and declarations of conflict of interest corresponding to the members of the Steering Committee were submitted to the PS MOT. Despite several attempts to source information in this respect, no documentation was provided. In submissions to the NAO, the PS MOT stated that he was uncertain whether there was a formal appointment of the members to the Steering Committee and whether they were provided with terms of reference.
- 2.1.8 Minutes relating to Steering Committee meetings held between 10 April 2015 and 14 October 2015 were made available to the NAO. While Part 1 of this report provided a summary of the salient points discussed during each of the meetings held, the focus in this section is to delve

deeper into that discussed by the Steering Committee, particularly in terms of negotiations held between Government and the VGH. The PS MOT indicated to the NAO that the Steering Committee was kept abreast of all developments relating to the process of negotiation. However, according to the PS MFH, the Steering Committee's minutes were never made available to him and he was unaware of their existence. Elaborating on this matter, the PS MFH affirmed that when the Steering Committee minutes were presented to him by this Office, he noted that the concerns regarding the project that he had expressed during the only meeting he attended were not in the minutes.

2.1.9 The Steering Committee held its first meeting on 10 April 2015, at which point the RfP for the granting of a services concession for the redevelopment, maintenance, management and operation of the SLH, the GGH and the KGRH had already been published (27 March 2015). The first item discussed by the Steering Committee during its initial meeting related to its setup. The Committee debated whether it was to be composed of a smaller inner core team, essentially the strategic decision makers, or include all its operational members. After considering this matter, the Committee resolved that all members were to be involved and it was up to the particular entity represented to decide on who was to attend, based on the decisions to be taken and the information required by the Committee. Various work streams were identified, namely, legal/financial, lands, stakeholder and communications management, technical, permitting and RfP-related. The latter was to comprise several subcommittees, that is, the Evaluation Committee, the Procurement (Health Service Concessions) Review Board, negotiation management and implementation monitoring. Although the members of most work streams and subcommittees were identified, the composition and terms of each were still fluid and in fact finalised over subsequent Steering Committee meetings.

2.1.10 As indicated in the preceding paragraph, during the Steering Committee meeting of 10 April 2015, the members that were to constitute the technical work stream were proposed. This work stream would eventually be assigned responsibility to establish the health service requirements sought by Government through this concession. The members proposed to form part of this work stream were a Consultant Orthopaedic Surgeon Mater Dei Hospital (MDH), the CEO GGH, the CEO KGRH, a Director MEH-Health and the Chair Foundation for Medical Services. While the NAO confirmed that the Consultant Orthopaedic Surgeon MDH, the CEO GGH and the CEO KGRH contributed to the technical work stream, the Director MEH-Health and the Chair Foundation for Medical Services informed the NAO that they were not appointed to this work stream.

2.1.11 Draft terms of reference of the various work streams were sourced by the NAO following the submission of queries to Projects Malta Ltd. The draft terms of reference, dated 11 May 2015, corresponded to the setting up of a Service Level Definition Working Group, a Site Preparation Working Group, an RFP Evaluation Committee, a Human Resources Workstream, a Public Relations Workstream, and a Project Management Workstream. Each document outlined the purpose of the workstream, the scope of work envisaged, the team members, the objectives, the terms of reference, the deliverables and completion dates.

- 2.1.12 Also noted in the minutes of the Steering Committee of 10 April 2015 was that Projects Malta Ltd was to act in the capacity of Negotiation Manager to oversee that the negotiations were progressing according to plan and ensure that the flow of activities was not hindered. In addition, a brief regarding the drafting and preparation of the healthcare delivery agreement had been sent to the Consultant Orthopaedic Surgeon MDH (one of the authors of the feasibility study cited in Part 1 of this report) and that his feedback was awaited.
- 2.1.13 During the following Steering Committee meeting, held on 23 April 2015, an update was provided regarding the services that Government sought to procure through this concession. Noted in this respect was the need to operationalise the Technical Work Stream, as its role in defining and advising the healthcare services required as at present and throughout the concession term was essential. In the NAO's opinion, this statement renders evident how ill-prepared Government was when publishing the RfP relating to this concession, for the services that it sought to procure were yet to be defined even though the call had been issued.
- 2.1.14 While discussions during the third meeting of the Steering Committee, held on 14 May 2015, did not focus on negotiations, during the fourth meeting, held on 10 June 2015, the CEO BEAT Ltd presented a minute regarding the appointment of the Contracts Management and Negotiation Committee. This minute was approved by the Steering Committee. The terms of reference set for the Contracts Management and Negotiation Committee (hereinafter referred to as the Negotiation Committee) included the compilation of a draft set of transaction agreements, including the public deed, the concession agreement, and the health services delivery agreement. The Negotiation Committee was also to develop a draft set of service level agreements to be used as the basis for assessing the performance of the concessionaire throughout the concession period and negotiate on behalf of the MEH, seeking guidance from it or its delegated authority on the stances to be taken on the most critical negotiating parameters of the transaction agreements. In addition, the Negotiation Committee was also duty bound to report to the MEH or its delegated authority on progress achieved during negotiations and seek direction on any deviations from the originally determined positions and make recommendations to the MEH or its delegated authority on the outcome of the finalised and agreed set of transaction agreements.
- 2.1.15 The members appointed to the Negotiation Committee were the CEO BEAT Ltd, the Partner RSM, the CEO Malta Enterprise and the Managing Partner Mifsud Bonnici Advocates. According to the minutes of the Steering Committee, the CEO BEAT Ltd was to chair the Negotiation Committee, the Partner RSM was to act as commercial and financial advisor, the CEO Malta Enterprise as economic policy advisor and the Managing Partner Mifsud Bonnici Advocates as legal advisor. The NAO noted that this set-up of the Negotiation Committee was a departure from that originally agreed by the Steering Committee regarding how Projects Malta Ltd was to fulfil the role of Negotiation Manager. Noted in the minute presented by the CEO BEAT Ltd was that the team could require support from the aforementioned consultant orthopaedic surgeon, other technical, legal and commercial experts, from international specialists, and from the respective entities' CEOs.

2.1.16 During the Steering Committee meeting held on 10 June 2015, the Committee also agreed that certain salient issues relating to the preparation of the sites were to be brought to the attention of the Negotiation Committee. The points that the Negotiation Committee was to resolve once negotiations with the concessionaire commenced comprised: a GGH-related issue of inconsistency between the RfP site plan and a Malta Environment and Planning Authority (MEPA) schemed road; and SLH-related difficulties in the relocation of the Blood Bank and a Malta Information Technology Agency (MITA) data hub.

2.1.17 As indicated in Part 1 of the report, on 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, the KGRH and the GGH. The NAO established that the next Steering Committee meeting held after the submission of the report by the Evaluation Committee was that of 10 July 2015. The most salient issue discussed during this meeting was that concerning the key principles that were to guide negotiations with the now selected preferred bidder, that is, the VGH. The main elements considered for negotiation stemmed from a paper presented to the Steering Committee by the CEO BEAT Ltd. The head of terms, an excerpt of which is reproduced in Figure 3, were approved by the Steering Committee. The paper cited in the minutes of the Steering Committee meeting held on 10 July 2015 was not provided to the NAO.

Figure 3 | Head of terms as agreed by the Steering Committee, 10 July 2015

Ownership structure

- parent company structured into two subsidiary entities: one for Property Management and the other for provision of Medical Services, operating through an internal lease agreement. Therefore, the Health Services Delivery Fee shall be paid in part to each of the two subsidiaries.

Concession agreement

- various agreements shall be established for defining the service levels and the health services agreements
- research needs to be conducted to establish the way forward with donated equipment

OPCO and PROPCO

- PROPCO: subsidiary looking after the property aspects (property management company)
- OPCO: subsidiary looking after the operations (medical services) aspects
- Concessionaire will operate an internal lease agreement between the OPCO and the PROPCO

Financing

- project must be self-sustained
- Government will need to retain access to any financing agreements/loans taken by Concessionaire in regard the project

Joint monitoring board

- establishment of a joint monitoring board
- mechanism to ensure progress is in line with the plan submitted by Concessionaire
- when deviation is identified, the joint monitoring board shall need to resort to independent expertise

Ground rent

- ground rent (€11.65/m²) payable on built-up areas
- ground rent becomes payable from target date when it is meant to be utilised and not the actual date of utilisation (safeguards against delays)

Health services delivery agreement

- implementation of the operational transition to occur over a period of time, and not overnight

Quality standards

- service levels that are included in the price charged to the Government of Malta to be defined
- create methodology statements to define how the processes are managed to ensure the quality standards are achieved
- operator to be responsive to honouring key performance indicators
- Weightmans contracted by Projects Malta Ltd to set the standards for key performance indicators and service level agreements

Medical tourism

- defined recognition that Concessionaire can use the hospital for Medical Tourism purposes

Termination

- clear termination clauses to be defined:
 - reasons of default
 - by force majeure

2.1.18 An update regarding the GGH schemed road issue, and the SLH Blood Bank and MITA data hub was provided during the meeting held on 10 July 2015 and in the subsequent meeting held on 29 July 2015. Also addressed during the Steering Committee meeting of 29 July 2015 was that the concession agreement was being revised with the VGH and that discussions were ongoing. Several other issues were discussed, including land and site surveys, technical schedules in the agreement, insurance policy schedules and the health services delivery agreement.

2.1.19 In the following meeting of the Steering Committee, held on 31 August 2015, updates relating to the concession agreement were provided. Noted in this respect was that the concession agreement, which was to regulate the construction, operation and maintenance of the sites, and the health services delivery agreement, which was to regulate the services provided thereat, were at an advanced stage of drafting. Acknowledged as action to be taken in the minutes of this Steering Committee meeting was the sharing of information relating to the governance structure being proposed and the respective terms of reference with the PS MFH for his review. The Steering Committee also noted that it was to obtain and provide a copy of the Barts Agreement to the negotiating team; however, as at the date of its meeting, a copy had not yet been made available. Other updates regarding the relocation of the SLH Blood Bank and site preparation were provided.

2.1.20 The final meeting held by the Steering Committee to which the NAO was provided with documentation was held on 14 October 2015. However, in the interim, an important development was registered in terms of the overall process relating to the concession, as on 9 September 2015, Projects Malta Ltd gave notice to 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. The NAO noted that negotiations continued beyond this date. However, according to the PS MOT, the award notice was issued

after agreement in respect of all key matters had been reached and near-final transaction agreements had been prepared. The PS MOT maintained that, following the award of the concession, it was some fine-tuning of this documentation that occurred. That stated by the PS MOT corroborated developments reported in the Steering Committee meeting minutes.

2.1.21 During the Steering Committee meeting of 14 October 2015, a record of progress registered regarding ongoing actions was communicated. These actions comprised the National Blood Bank Unit, which was to continue operating from the SLH for a further five years, and other site preparation considerations, including matters concerning the medical school, the expropriation of parts of the site and the relocation of entities occupying areas within the site.

2.1.22 Of note was the update provided by the CEO BEAT Ltd in relation to the negotiation process. In this respect, the Steering Committee was informed that four main contracts were being negotiated. These entailed the concession agreement, which was to span 30 years; the health services delivery agreement, that was to address the levels of health services that were to be provided by the VGH; the labour supply agreement, which addressed workforce and employee-related issues; and the emphyteutical deed, focusing on matters concerning the transfer of land. Another negotiation-related update provided to the Steering Committee was the proposed establishment of several supporting committees to define, monitor and control the operational and development aspects of the project. Specifically cited in this regard were the:

- a mobilisation plan;
- b handover plan, that was to define how the operation would be transferred from Government to the VGH over a defined timeframe of three months;
- c appointment of a Project Monitoring Board (PMB), that was to be established by the VGH, with at least one member thereof appointed by Government. The role of the PMB was to monitor the functionality of the hospitals and the activities within VGH-controlled operations to ensure harmonised operating and quality standards;
- d setting up of the Health Construction Management Committee, which was to ensure that the development was in line with the proposal submitted by the VGH;
- e constitution of the Change Management Committee, which was tasked with dealing with employees and representative Unions;
- f need to develop a Joint Plan between Government and the VGH to ensure that the project did not stall; and
- g setting up of a Medical Council to review the situation with foreign doctors and assess how this group of medical professionals could operate uninterruptedly in Malta.

- 2.1.23 As indicated in paragraph 2.1.20, this meeting was the last held by the Steering Committee for which records were provided to the NAO. Hence, it remains unclear whether the Steering Committee continued operating, and whether negotiations on the contractual framework persisted beyond this date.
- 2.1.24 Having reviewed the minutes of the Steering Committee, the NAO explored whether the process of stakeholder engagement comprehensively captured all key perspectives. In response to queries raised by the NAO, the PS MOT stated that this was achieved via the Steering Committee meetings. In addition, the PS MOT cited the presentation delivered to Cabinet by the Negotiation Committee regarding the agreements that were to be entered into with the VGH, hence serving as an opportunity of engagement with a key stakeholder.
- 2.1.25 Consistent with that captured in previous paragraphs, the PS MFH maintained 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.
- 2.1.26 When confronted with the concerns expressed by the MEH-Health regarding their lack of involvement within the Steering Committee, the PS MOT, who at the time served as PS MEH-Energy, intimated that this shortcoming related to the intentional reluctance of certain key stakeholders to participate and cooperate on the project for it to falter. In turn, the PS MFH, having served as PS MEH-Health at the time under review, reiterated that officials and technical experts working for the Health department did not turn down requests for assistance during the process of drawing up of the agreements with the VGH. The PS MFH forcefully rejected claims that officials then representing MEH-Health deliberately acted in a way for the VGH project to falter. Elaborating in this respect, the PS MFH contended that, following the signing of the concession agreement, the Ministry's officials, himself included, engaged fully with the VGH in a bid to clarify the lacunae that the signed text presented and that had threatened to derail the project's implementation. The PS MFH maintained that throughout this engagement with the VGH, the Ministry 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. Notwithstanding this, the PS MFH indicated that the dichotomy of roles between the MEH-Health, in its responsibility for the health operations side of the concession, and the MEH-Energy, responsible for the capital element, resulted in lack of clarity and possibly contributed to implementation failure.
- 2.1.27 The PS MOT noted that the division of responsibility and the later changes in the political structure of the ministry responsible for health were not optimal and that, traditionally, concessions and tenders were assigned to the ministry responsible for the sector. The horizontal function of Projects Malta Ltd was also described by the PS MOT as inconsistent and ambiguous in terms of his role as permanent secretary of a line ministry. Of interest to the NAO was that the PS MOT acknowledged that this administrative and political setup

provided the VGH with opportunities to exploit weaknesses in the division and to negotiate different agreements with different parties to its advantage.

- 2.1.28** Further context to the tension captured in the preceding paragraphs was provided by the Minister for Health in a meeting held with the NAO. The Minister for Health explained that in April 2014, following the ministerial reshuffle and his appointment as Parliamentary Secretary for Health, he was informed by the Prime Minister, the Chief of Staff OPM and the Principal Permanent Secretary that he would be responsible for the medical element of the work overseen by the Ministry for Energy and Health, focusing on aspects such as clinical affairs and public health. The then Parliamentary Secretary for Health was informed that the then Minister for Energy and Health was to oversee projects, including but not limited to that relating to the concession eventually awarded to the VGH. Elaborating in this respect, the Minister for Health explained that, at the time, the Prime Minister adopted the practice whereby Projects Malta Ltd, under the responsibility of the Hon. Konrad Mizzi as Minister for Energy and Health (later appointed as Minister within the OPM and the Minister for Tourism, retaining control over Projects Malta Ltd in each instance) had direct control over all major projects. The Minister for Health declared that he was unaware of the Steering Committee and that he was never invited to attend its meetings, this despite the implementation of the contracts falling squarely under his responsibility.
- 2.1.29** Notwithstanding the significant materiality of the project and its undoubted impact on public finances, the NAO noted that MFIN also remained a conspicuous absence from the Steering Committee's proceedings. In reply to queries by this Office in this respect, the PS MFIN stated that the Ministry was never involved, briefed or consulted in the negotiations process or any aspect of it, neither before or after the award of the concession. The PS MOT justified the lack of involvement of MFIN as normal practice, stating that the Ministry was not usually involved during negotiations of particular tenders or concessions.
- 2.1.30** Another aspect of enquiry that the NAO pursued related to whether there were significant departures from what was originally intended in the concession, as captured in the RfP, and that eventually agreed to following negotiations. Replying in this regard, the PS MOT stated that no departures were noted. This Office maintains otherwise, with significant changes noted between that originally sought through the RfP and that eventually contracted following negotiations. A detailed account of these departures is provided in section 5.1 of this report.
- 2.1.31** The NAO also enquired whether a check prior to the finalisation of the contracts, to ascertain that the concession that was to be awarded to the VGH was better than other realistic alternative options, was carried out. In reply, the PS MOT stated that no other realistic alternative options were available and therefore no such check was carried out.

Negotiation Committee proceedings

- 2.1.32 The Negotiation Committee, as a subcommittee set up by the Steering Committee under the RfP work stream, was specifically tasked with engaging in and conducting negotiations with the VGH on behalf of the Government. Based on the review of the Steering Committee meeting minutes and the limited submissions by the PS MOT, the NAO established that the members appointed to the Negotiation Committee were those endorsed by the Steering Committee in its meeting of 10 June 2015, that is, the CEO BEAT Ltd, the Partner RSM, the CEO Malta Enterprise and the Managing Partner Mifsud Bonnici Advocates. When queried as to who chaired the Negotiation Committee, the PS MOT confirmed that this Committee was overseen by the CEO BEAT Ltd.
- 2.1.33 Through subsequent exchanges with the Negotiation Committee, the NAO established that the CEO Malta Enterprise did not form part of this Committee. This was confirmed by the CEO Malta Enterprise.
- 2.1.34 Despite requests for letters of appointment submitted to the PS MOT regarding the members of the Negotiation Committee, no information was forthcoming. However, the PS MOT provided the NAO with the letters of engagement submitted by those appointed to assist in the negotiation process and related supporting documentation. The letters of engagement submitted by RSM Malta Consulting Ltd, BEAT Ltd and Mifsud Bonnici Advocates were dated 6 January 2015, 1 May 2015 and 15 December 2015, respectively. The NAO noted that the letter of engagement submitted by BEAT Ltd provided a generic consultation framework, while that of Mifsud Bonnici Advocates corresponded to a date when the negotiation process was concluded. The NAO's review of related supporting documentation submitted by the PS MOT led to the understanding that the Negotiation Committee was also aided by other legal firms, namely, Ganado Advocates, Weightmans, and Bird and Bird.
- 2.1.35 Requests for declarations of conflict of interest signed by the members of the Negotiation Committee were made by the NAO to the PS MOT. Despite such requests, the required information was not made available to this Office. In response to queries raised by this Office, the Negotiation Committee members indicated that they did not recall signing declarations of conflict of interest; however, noted that they were bound by professional ethics.
- 2.1.36 In the NAO's opinion, the Negotiation Committee fulfilled a pivotal and critically important role in the award of the concession for the redevelopment, maintenance, management and operation of the SLH, the GGH and the KGRH. It was in this context of understanding that the NAO sought to review the negotiation process, with specific interest in documentation ordinarily generated in a process of such importance and complexity. Documentation sought by the NAO in this respect included the minutes of the negotiation meetings undertaken 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.

- 2.1.37 In submissions to the NAO, the PS MOT confirmed that no minutes were retained by the Negotiation Committee, yet contested the utility of such records. The PS MOT sought to justify this failure on account that the Negotiation Committee’s role was that of extracting that offered in the bid by the VGH and aligning it with the requirements established in the RfP to have a workable concession. Elaborating in this regard, the PS MOT informed the NAO that Government and the preferred bidder had discussed and agreed on the principles that were to be developed during the negotiations and that the Steering Committee had been apprised of these principles. Further noted by the PS MOT was that the negotiations were held concurrently with extensive live drafting sessions, during which bespoke agreements were jointly developed. Also cited in this respect was the absence of guidelines regulating negotiations and that the Negotiation Committee’s role was not final in that Government’s authorisation was ultimately required and sought. The PS MOT further stated that the salient points of the negotiations pertinent to each of the transaction documents were presented to the Steering Committee and eventually referred to and endorsed by Cabinet.
- 2.1.38 The CEO BEAT Ltd and the Partner RSM contended that it was not practical for the Negotiation Committee to retain minutes of negotiations. Specifically cited as justification in this respect was that the retention of minutes was time consuming, would have diverted attention from the core negotiations, was not regulated by any form of corporate governance framework, was too complex to capture, and that one only ought to look at the result of negotiations. Nevertheless, the CEO BEAT Ltd did concede that, in hindsight, the lack of documentation could be considered a shortcoming.
- 2.1.39 Notwithstanding that stated by the PS MOT, the CEO BEAT Ltd and the Partner RSM, the lack of visibility over a process of negotiation that led to the concession of three public hospitals is attributable to two significant failures. First, that the Negotiation Committee failed to retain any documentation relating to its work. This reflects abysmally on the standard of accountability and transparency that ought to have characterised such an important process. 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 this a severe failure in governance.
- 2.1.40 In view of the lack of any form of record of the work of the Negotiation Committee, the NAO was constrained to develop its understanding of the process of negotiation based on the recollections of those present. To this end, this Office scheduled a meeting with all members of the Negotiation Committee, that is, the CEO BEAT Ltd, the Partner RSM and the Managing Partner Mifsud Bonnici Advocates. As indicated in paragraph 1.4.6, the Managing Partner Mifsud Bonnici Advocates was unwilling to accept the NAO’s invitation citing professional ethics. It is for this reason that the views of the Negotiation Committee are solely expressed by the CEO BEAT Ltd and the Partner RSM. In the meetings held by the NAO with the Negotiation Committee, the importance of the role fulfilled by the CEO GGH and the CEO KGRH in establishing the Government’s health service requirements was highlighted. To this end, the NAO obtained the views of the CEO GGH and the CEO KGRH through a meeting. The

CEO GGH and the CEO KGRH provided records of correspondence exchanged in relation to their role in the negotiation process following requests made by this Office. The testimony and documentation provided is reported on in the ensuing paragraphs. The documentation submitted by the CEO GGH and the CEO KGRH also served to highlight the involvement of the Consultant Surgeon GGH. In reply to queries addressed by this Office regarding her involvement in the concession, the Consultant Surgeon GGH explained that prior to the concession she was involved in the projects and initiatives undertaken for the improvement of the GGH and continued providing feedback on the requirements of the hospital when so requested by her superiors.

2.1.41 In a meeting held by the NAO with the Negotiation Committee, the CEO BEAT Ltd confirmed that the Committee negotiated the Services Concession Agreement (SCA), the Health Services Delivery Agreement (HSDA), the Labour Supply Agreement (LSA) and the addenda signed on 7 December 2015.

2.1.42 A glimpse into the roles of the various members of the Negotiation Committee and its external advisors was elicited from correspondence provided to the NAO by the CEO GGH and the CEO KGRH. In correspondence submitted by the Chair Negotiation Committee on 21 July 2015, tasks to be undertaken by all parties were assigned as follows:

- a Ganado Advocates was responsible for the alignment of the SCA and the HSDA, the integration of site-related issues into the SCA, the preparation and development of the LSA, and other contract drafting-related matters;
- b the Consultant Surgeon GGH and the CEO KGRH were to prepare bed and service requirements and develop existing performance benchmarks;
- c Weightmans, with input from technical team – understood by the NAO as reference to the Consultant Surgeon GGH and the CEO KGRH – were to define the healthcare services, ancillary services, clinical pathways, healthcare service levels and ancillary care service levels, among other elements;
- d the CEO BEAT Ltd and Partner RSM were to develop the availability payment mechanism, propose definitions of termination scenarios and payments, force majeure provisions, the scheduled service commencement programme, and other contractual provisions. In addition, the CEO BEAT Ltd and the Partner RSM were to determine mechanisms that were to regulate the establishment of liquidated damages, compensation for refundable improvements, charges and availability, service credits and the classification of material subcontractors;
- e the site preparation team was tasked with the preparation of land and site surveys;
- f a notary was requested to prepare the emphyteutical deed;

- g the architect and engineer were to review the conceptual design and, together with the information systems advisor, formulate the redelivery requirements, review of changes schedule, development of method statements, hand back requirements and hand back certificate;
- h the insurance advisors were to draft the insurance policies jointly with the insurers; and
- i several other tasks listed yet not attributed to specific persons included the nexus between the concession and the agreement entered into by Government with the Queen Mary University of London (QMUL).

2.1.43 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. This understanding was consistent with the correspondence highlighted in the preceding paragraph.

2.1.44 Focus is first directed towards the Negotiation Committee's role of interfacing. By way of example, the CEO BEAT Ltd explained that one of the work packages focused on action necessary to make the hospital sites available to the concessionaire. Elaborating on this example, the CEO BEAT Ltd explained that it was the remit of the working group tasked with overseeing this work package to check the boundaries, list the type of services available, identify the occupiers, take the necessary actions to vacate them from the premises and state any issues that would require discussion with the VGH. The Partner RSM recalled that the SLH had several tenants that were to vacate the site.

2.1.45 Another essential element of the interfacing carried out by the Negotiation Committee was its work with the team responsible for the drafting of the concession's contractual framework. The CEO BEAT Ltd recalled that this team was divided into two groups, with Ganado Advocates focusing on the concession, and Weightmans assisting in the identification of the technical aspects that were to be included in terms of the health services to be delivered. According to the CEO BEAT Ltd, the latter law firm had previous experience of health transactions similar to this concession and therefore provided the Negotiation Committee with basic groundwork and the draft standard agreements on which subsequent work was based.

2.1.46 Further insight into how the health service requirements were set in the contract drafting process was obtained from the correspondence provided by the CEO GGH and the CEO KGRH. In the said correspondence, the CEO BEAT Ltd referred to Weightmans as the legal advisors on the HSDA and noted that their pending work included the drafting of service levels and method statements for clinical services, which work was to set the structure for the local medical team to provide its medical input. The draft standard agreements submitted by Weightmans comprised a generic framework typically used for such contracts and did not provide customised provisions adapted for the local context. Weightmans submitted the draft service specification documents for different services, indicating that specific KPIs were to be

discussed with the local medical team – understood as reference to the Consultant Surgeon GGH and the CEO KGRH. Based on the review of correspondence provided by the CEO GGH and the CEO KGRH, the NAO noted that during the process of contract drafting there was an element of misunderstanding as to the role and extent of input that could be provided by Weightmans, and the supplementary input to be provided by the local medical team. This misunderstanding was highlighted following the criticism put forward by the Consultant Surgeon GGH in response to the service specification documents forwarded by Weightmans. The Consultant Surgeon GGH noted that these documents hardly dealt with the variety of services and departments required in an acute hospital and further commented that the documents covered generic aims, policies, principles and selected national targets for the departments covered. In addition, the Consultant Surgeon GGH stated that she was under the impression that the medical team was to be sent service level agreement templates and samples of completed service level agreement documents of actual hospitals. In reply, Weightmans explained that the documents they had prepared covered principles for service provision, but that the input of clinicians was required to further tailor the documents to the local context. In response, the Consultant Surgeon GGH provided a list of services/areas that were required at the GGH. Additional clarifications were provided by Weightmans in that the documents made available to the medical team were those used in England and Wales, and that details relating to local regulations and policies had been removed as they were specific to that context. The assistance of clinicians was required to understand how the services were set, assessed and benchmarked. This input was particularly crucial as the policy framework that was ordinarily referred to in drafting agreements of this nature was not codified or well developed in the local setting. Weightmans stated that since these detailed provisions were still to be drafted, additional time was required for this work. Meetings were organised thereafter to address this matter.

2.1.47 The Negotiation Committee also ought to have served as a crucial point of interface between the technical work stream, that is, the team of medical experts that drafted the Government's requirements in terms of services to be delivered, and the VGH. The Negotiation Committee informed the NAO that the technical work stream were engaged to formulate the key performance indicators, and the service levels and facilities that were required in the hospitals in conformity with the RfP. According to the Negotiation Committee, the medical experts were also tasked with identifying the operational requirements of the hospitals from a health management perspective. Elaborating in this regard, the Negotiation Committee indicated that the technical work stream eventually involved in this project differed to that cited in the Steering Committee meeting of 10 April 2015 (paragraph 2.1.10 refers). The Negotiation Committee referred to the involvement of the CEO GGH, the CEO KGRH and the Consultant Orthopaedic Surgeon MDH (previously involved in drafting the feasibility study leading to the issuance of the concession and as a member of the RfP Evaluation Committee) as part of the technical work stream. The CEO BEAT Ltd maintained that the members of the technical work stream were selected and assigned by the MEH-Health.

- 2.1.48 According to the Negotiation Committee, an element of support to the technical work stream was provided by the Consultant MFH, particularly in relation to the setting of key performance indicators. In this respect, the Consultant MFH specified that the Parliamentary Secretary for Health had requested him to attend meetings with lawyers involved in the process of contract drafting to verify that all key services were captured. The Consultant MFH confirmed that the CEO GGH and the Consultant Surgeon GGH were also present for these meeting. In its review of correspondence submitted by the CEO GGH and the CEO KGRH, the NAO noted that the Consultant MFH featured frequently in exchanges relevant to the concession. Of interest to this Office was correspondence wherein the Parliamentary Secretary for Health tasked the Consultant MFH with contacting the Chair of the Dermatology Department regarding the setting of dermatology service requirements and referring such requirements to Weightmans. In another exchange, the Parliamentary Secretary for Health requested the Consultant MFH to attend a technical meeting. On another occasion, the CEO BEAT Ltd requested feedback on the draft service specification documents prepared by Weightmans, which resulted in the Consultant MFH querying why dialysis had been left out of the plan for the GGH. Also of note was correspondence submitted by the CEO BEAT Ltd reporting the progress registered by the Consultant MFH, the CEO KGRH, the CEO GGH and the Consultant Surgeon GGH on the standards, service requirements and method statements. The NAO noted that the Consultant MFH was also in copy when the GGH service uptake figures, a list of required services for the GGH and the RfP document were circulated, when other members of the medical team provided feedback on the draft service specification documents prepared by Weightmans and when a meeting with this legal firm was being coordinated.
- 2.1.49 Furthermore, the CEO BEAT Ltd maintained that it was this technical work stream who negotiated directly with the VGH and it was through this negotiation of service requirements sought by Government that the list of services included in the HSDA was arrived at. The Negotiation Committee noted that this approach also extended to negotiations held with respect to the Barts Medical School. The Partner RSM emphasised that the health service requirements as set by the technical work stream were then transposed into the contractual framework without any amendments by the Negotiation Committee.
- 2.1.50 In light of that stated by the CEO BEAT Ltd, the NAO sought the views of the CEO GGH and the CEO KGRH in terms of their role as members of the technical work stream, particularly in relation to their involvement in negotiations on behalf of Government with the VGH in setting the health services to be sourced. Of note to the NAO was the contrasting perspective provided by the CEO GGH and the CEO KGRH regarding their involvement in the process of negotiation. The CEO GGH and the CEO KGRH denied any direct interaction with the VGH and indicated that they were not aware of having formed part of a committee or structure that had negotiated the health service requirements of the hospitals. In addition, the CEO GGH and the CEO KGRH affirmed that they were not provided with any terms of reference or letters of appointment to negotiate on behalf of Government. 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 requested to review or endorse any health service

requirements in connection with the contracts subject to negotiation. Moreover, the CEO GGH and the CEO KGRH maintained that they were not aware that their input was being utilised to formulate the basis of the health service requirements in the contracts.

2.1.51 Elaborating on her involvement, the CEO GGH could not recall whether the requests for information came from the Negotiation Committee or the MFH, but explained that, either way, the other party would be in copy. Also stated by the CEO GGH was that the PS MFH and other officials from this Ministry were in copy in these exchanges. The CEO GGH also referred to an OPM official who was copied in correspondence exchanged; however, these exchanges related to the Barts Medical School. On the other hand, the CEO KGRH explained that he was only contacted by the MFH.

2.1.52 That stated by the CEO GGH and CEO KGRH was verified against the correspondence exchanged at the time in connection with the concession and provided by the CEOs to the NAO. This Office noted that the correspondence reviewed contradicted assertions made by the CEO GGH and the CEO KGRH in testimony provided. Foremost among which was that stated by the CEO GGH and the CEO KGRH regarding their involvement in the contract drafting phase of negotiations. Of note was correspondence sent by Projects Malta Ltd to the CEO KGRH on 22 May 2015, wherein it was indicated that his participation in the service level definition team and the contract drafting and negotiation team was required. This email clearly indicated that the intended role of the CEO KGRH went beyond that of merely providing information, but was one with evident awareness that his contributions were required in connection with the concession awarded by the Government to the VGH. Although the equivalent correspondence for the CEO GGH was not provided, the NAO deems it reasonable to understand, particularly in view of the testimony provided by the members of the Negotiation Committee, that similar exchanges were addressed to the CEO GGH. Other correspondence provided evidence that the CEOs were aware that information and feedback from them was being sought with respect to a concession. This included the referral of the VGH's technical submission as well as the RfP document. Furthermore, in providing service uptake data, the Consultant Surgeon GGH referred to the RfP. In addition, the CEO GGH and the CEO KGRH were also informed about deadlines relating to negotiations and included in correspondence listing pending tasks to conclude the negotiation and contract drafting process.

2.1.53 Moreover, the CEO KGRH and the Consultant Surgeon GGH were instructed by the Parliamentary Secretary for Health to submit service requirements to Weightmans relating to the KGRH and the GGH, respectively. The Parliamentary Secretary advised the Consultant Surgeon GGH to keep the CEO GGH informed regarding the GGH service requirements. As indicated in the preceding paragraphs, the CEO BEAT Ltd instructed the local medical team to work with Weightmans to provide medical input with respect to the service levels and method statements. Evidence of feedback provided in response to the draft service specification documents forwarded by Weightmans was found in respect of the Parliamentary Secretary for Health, the Consultant Surgeon GGH and the Consultant MFH. Evident in the

correspondence forwarded by the CEO BEAT Ltd was that feedback was also sought from the CEO GGH, particularly in view of her role as part of the local medical team attending meetings with Weightmans to further supplement the generic provisions in the documents with local information and standards. Also of note to the NAO was correspondence submitted by the CEO BEAT Ltd wherein he stated that the CEO GGH, the CEO KGRH, the Consultant Surgeon GGH and the Consultant MFH had registered progress on the standards, service requirements and method statements being developed. The NAO noted that the correspondence made available did not include the circulation of final drafts of the HSDA for conclusive review or endorsement by the medical team.

2.1.54 On the matter of direct negotiations with the VGH, the correspondence made available to the NAO by the CEO GGH and the CEO KGRH mostly confirmed that stated by the CEOs, that is, that they did not partake in such negotiations. This Office's attention was drawn to the evidence of only one meeting scheduled with the VGH at the office of the PS MOT, for which the Parliamentary Secretary for Health, the PS MFH, the CEO GGH and the CEO KGRH were requested to be present. The meeting report indicated that human resources issues were discussed at this meeting.

2.1.55 Providing an element of background to how the requirements of the hospitals were set, the CEO GGH and the CEO KGRH referred to a medical brief drawn up around 2014 and presented to the Hon. Godfrey Farrugia, then Minister for Health. This voluminous document outlined salient issues that warranted attention and plans intended to address such issues. In essence, the medical brief was to serve as the basis for the vision of the hospitals and projected service requirements in the context of the Gozitan community and the rehabilitation services in Malta. The intended use of the medical brief was to tap EU funds. The CEO GGH and the CEO KGRH were unaware of whether and how the medical brief that they prepared was used. Supporting that stated by the CEO GGH and the CEO KGRH, that the medical brief informed the vision and projected services requirements for this concession, was correspondence provided to the NAO by the CEO KGRH. According to this correspondence, dated 20 July 2015, the Parliamentary Secretary for Health requested a copy of the medical brief for figures and service requirements for KGRH and rehabilitation. Indicated in this correspondence was that the details of the medical brief had been mentioned in a meeting with the Weightmans, that is, the legal advisors responsible for the drafting of the service level agreements.

2.1.56 In submissions to the NAO, the CEO GGH and the CEO KGRH provided a copy of a memorandum to Cabinet, the subject of which was the Gozo Health Campus, presented by the then Minister for Health, the Hon. Godfrey Farrugia, on 3 March 2014. The CEOs also submitted the aforementioned medical brief for the national rehabilitation centre, dated January 2014. The NAO compared both documents to the RfP for the award of the concession on the three public hospitals issued on 27 March 2015 to assess whether the overarching objectives and plans for the GGH and the national rehabilitation centre were consistent with the specifications for the GGH, the KGRH and the SLH included in the RfP. The aim of these comparisons was not to identify discrepancies in the detailed provisions, as it is considered reasonable for the details to be further developed and revised once the project assumed more definite form.

- 2.1.57 Consistent with the RfP, the memorandum to Cabinet envisaged the GGH being developed into a teaching hospital and considered its expansion and upgrade as an essential precondition to the development of an academic institution. Noted in the document submitted to Cabinet was that a Memorandum of Understanding had been signed with the QMUL in this respect in February 2014. The memorandum to Cabinet and the RfP proposed the modernisation of the existing hospital grounds and an expansion of facilities, increasing the bed capacity for medical, surgical and specialty care and the development of a full rehabilitation facility with integrated community outreach services. Furthermore, both documents included a provision for the development of a regional primary care centre to provide primary care services in a structured and integrated manner.
- 2.1.58 Two main differences noted between the memorandum to Cabinet and the RfP related to the financing of the project and the envisaged service users. While the memorandum proposed obtaining funding to finance the upgrade and expansion of the GGH through the European Regional Development Fund, the RfP sought to transfer the capital redevelopment and investment costs to a concessionaire, who in turn was to exploit the management and operation of healthcare services from the GGH, the SLH and the KGRH. Additionally, the memorandum envisaged the costs to build and equip the academic building to be incurred by Government and to be recouped through the public-private partnership with the QMUL, whereas the RfP required the concessionaire to host, build and fit out with equipment a medical school at the GGH to be run by the Barts School of Medicine and Dentistry, part of the QMUL. The memorandum included reference to the possibility of setting up a nursing school in Gozo, with a secondary base in Malta. This contrasted with the RfP specifications, which situated the nursing school solely on the SLH grounds.
- 2.1.59 With respect to the national rehabilitation centre, the NAO noted that the plans included in the medical brief, though not at odds with the RfP, were more ambitious and more detailed than the requirements stipulated in the RfP. The medical brief outlined the existing segregation of the outpatients department, the inpatient area and the orthotics and prosthetics unit (OPU), and mentioned that the infrastructure of the hospital, with the scattering of different rehabilitation services in different locations, hindered the provision of a holistic and integrated service, and optimal care. In this respect, the medical brief proposed one standalone centre that incorporated all the necessary rehabilitation facilities. In contrast, proposed in the RfP were rehabilitation services within the KGRH and the SLH, following extensive redevelopment and upgrading of the existing facilities.
- 2.1.60 The medical brief stipulated that the national rehabilitation centre was to include dedicated rehabilitation beds and access to all necessary facilities for physical rehabilitation, a discharge support function with facilities for social workers and primary care workers to enable effective patient discharge, as well as outpatient and orthotic and prosthetic facilities for continued rehabilitation management. In addition, the national rehabilitation centre was to have facilities for home care teams to bridge hospital and community domiciliary services, as well as operational policies enabling inter- and multi-disciplinary teamwork focusing on

comprehensive rehabilitation in terms of service provision and delivery. The NAO noted that these plans were reproduced verbatim in the feasibility study produced by the MEH for the KGRH, but were not included in the RfP. While most of the envisaged services and facilities in the medical brief were specifically included in the RfP service specifications for either the KGRH or the SLH, some were not. The missing service specifications included a diagnostic gait analysis and motion laboratory, a haptic and neurofeedback rehabilitation laboratory including robotics, podiatry services, vocational rehabilitation facilities, clinical psychology services and community services, which comprised outreach teams.

2.1.61 The NAO noted that the CEO GGH and the CEO KGRH would later be engaged as employees of the VGH. This Office's attention was drawn to a possible conflict of interest scenario, where the CEO GGH and the CEO KGRH were initially representing Government's interests in the concession and later representing the VGH's interests. The CEO GGH and the CEO KGRH contended that no conflict of interest existed, stating 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.

2.1.62 Queries were directed to the PS MFH as to the involvement, or lack thereof, of the MEH-Health in the negotiation process. Although the PS MFH could not exclude that the process of negotiations was supported by officials from the MEH-Health, he contended 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. The only interactions cited by the PS MFH relating to the concession under review were limited to the various requests for information put forward to the Health Division of the Ministry. These requests included, but were not limited to, a list of clinical services that were being provided at the GGH and the KGRH prior to the concession and the budgetary allocation in respect thereof. Furthermore, the Advisor MFH and the Consultant MFH, somewhat ambiguously in the case of the latter, maintained that the MEH-Health was unaware of the involvement of its officials in supporting the negotiation process, while the PS MFH argued that he ought to have been involved in the appointment of officials from within MEH-Health to assist the negotiation process.

2.1.63 The NAO noted that the PS MFH was included in several of the emails provided by the CEO GGH and the CEO KGRH to the NAO. In those instances where the PS MFH was not included as a recipient or copied in the correspondence, he was in most cases either later included in the thread or informed of the details in another email, or else the nature of the email did not warrant his notification. However, there were some instances, such as in the case when the CEO KGRH was notified of his role in the concession, and when the CEO BEAT Ltd provided an update of progress in the contract drafting and negotiations process, when the inclusion of the PS MFH was warranted yet remained excluded from key exchanges. Of note was the fact that the correspondence reviewed by the NAO was limited to that provided by the CEO GGH and the CEO KGRH, and therefore was limited to instances of exchanges relating to those processes in which the CEOs were directly involved.

- 2.1.64 The omission of the MEH-Health from contributing to the negotiation process in a structured, comprehensive, and meaningful manner 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.
- 2.1.65 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. Technical expertise in this context refers to clinical knowledge. While the limitations of Government's technical representation were highlighted in the previous paragraphs, attention is now directed towards the VGH's technical competence at the negotiation stage. Queries to this end were addressed to the Negotiation Committee, to better understand who the technical counterparty to Government was. This point assumes particular relevance as the NAO's analysis of the bid submitted by the VGH (reported in Part 1 of this report) illustrated that the Concessionaire had no technical expertise and was entirely reliant on the involvement of third parties to compensate for this inadequacy. It was in this context that the NAO sought to establish the involvement of these third parties during the negotiation process. According to the Negotiation Committee, the VGH was represented by Ram Tumuluri and his legal counsel. No reference to any technical experts was made. The Negotiation Committee indicated that the VGH was to be supported by Partners HealthCare International (PHI) who were to coordinate with the technical work stream in matters relating to the health services to be delivered. It is with concern that the NAO notes that the technical work stream provided this Office with a contradictory version of events, with the CEO GGH and the CEO KGRH asserting that they did not negotiate with the VGH prior to entry into the contracts. The interaction between the CEO GGH and the CEO KGRH with the PHI occurred well after the entry by Government and the VGH into the contracts.
- 2.1.66 Aside from the role of interfacing with the several working groups overseeing the various facets of the concession, the Negotiation Committee assumed lead in the negotiation of the commercial elements of the concession. This was confirmed by the CEO BEAT Ltd and the Partner RSM, who indicated that they negotiated directly with the VGH in this respect. Correspondence submitted by the CEO GGH and the CEO KGRH served as evidence of the role fulfilled by the CEO BEAT Ltd and the Partner RSM when coordinating and facilitating work or being copied in correspondence relating to the various aspects of the negotiation and contract drafting process. In the correspondence dated 21 July 2015 (paragraph 2.1.43 refers), the CEO BEAT Ltd outlined the tasks to be performed by the parties providing assistance in relation to the concession. Noted in this correspondence was that the tasks allocated to the CEO BEAT Ltd and the Partner RSM comprised the address of several commercial elements associated with the concession. Notwithstanding this, the dearth of information made available to the NAO precludes this Office from establishing a proper understanding of the work of the Negotiation Committee in this regard. Had this information been made available, the NAO could have verified 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.

- 2.1.67 Documentation relating to the commercial elements of the concession, specifically the fees payable, was traced in the correspondence made available by the CEO GGH and the CEO KGRH. Noted in this correspondence was that the Government was considering introducing the concept of variable capacity for the use of beds throughout the year, as opposed to a daily fixed capacity model. In this respect, an Economic Advisor, the Executive Director of E-Cubed Consultants, was engaged around July 2015 to advise on the development of an optimisation model for the determination of bed capacity on a seasonal basis, hence allowing for variable capacity to match varying demand throughout the year. A review of the concession agreements eventually entered into indicates that this variable capacity was not implemented. In the NAO's understanding, this concept of flexibility in capacity use was considered too late in the process and should have been proposed at the RfP stage. The Economic Advisor was also tasked with developing a health services delivery fee deduction formula, to be utilised as the mechanism for the downward revision in the fee payable to the concessionaire when total capacity beds were not made available during certain periods and in cases of non-performance. This Office's review of the concession agreements suggests that the HSDA only provides for the deduction of the fee payable if bed capacity falls below 75 per cent of the total bed capacity allocated to Government. Additionally, service failure was to result in deductions of the fees payable. The outcome of the advice provided by the Economic Advisor, if any, was not made available to the NAO and therefore it remained unclear to this Office whether these two contractual provisions assimilated the advice in relation to the health service delivery fee deduction formula.
- 2.1.68 Of concern to the NAO were statements made by the Minister for Health regarding the covert role of the OPM in negotiations held. The Minister for Health contended that parallel negotiations were held with the VGH by the Minister for Tourism and the Chief of Staff OPM, maintaining that this situation persisted when he was the Parliamentary Secretary for Health and when Minister for Health. Furthermore, the Minister for Health indicated that points of contention that arose with the VGH later in the process were at times resolved with the VGH resorting to the OPM to intervene to push forward its interests, thereby bypassing the MEH-Health and later the MFH.
- 2.1.69 This concern regarding the role played by the OPM was also cited by the PS MFH, the Director General (DG) Finance and Administration MFH, the Advisor MFH and the Financial Controller MFH. The PS MFH and the DG Finance and Administration MFH observed that changes effected through side letters, executed without the involvement of the MEH-Health and later the MFH, favoured the VGH and were intended to make the contract commercially viable and improve the Concessionaire's standing with financial institutions. An element of corroboration of that stated by the Minister for Health and the MFH officials was obtained in correspondence reviewed relating to the recurrent costs of the KGRH dated 10 June 2016, submitted by the CEO KGRH to the Partner RSM and the Minister within the OPM, rather than the Minister for Health, under whose responsibility this cost element certainly rested.

2.1.70 The only documentation that the NAO sourced from Projects Malta Ltd regarding the work undertaken by the Negotiation Committee on its behalf was a presentation made available to it by the Committee. According to Projects Malta Ltd, this undated presentation, titled 'Findings from Negotiations with Vitals Global Health Care (VGH) – Report of the Negotiating Team' was prepared by the Negotiation Committee on its behalf. Projects Malta Ltd informed the NAO that this report had been presented to the Minister for Energy and Health, who in turn presented the details to Cabinet. The report provided a background to the rationale behind the concession, information on the project, the procurement process, the bidder and its partners, the negotiating team's role, and an overview of the main clauses of the Agreements to be signed. A high-level overview of the content of this report is provided hereunder:

- a the report referred to the Government being approached by Queen Mary University for the setting up of a medical school and the subsequent need for the GGH to be completely refurbished for the proposed medical school to be integrated in it to enable medical students to fulfil their practical sessions;
- b regarding the Negotiation Committee, the report stated that this Committee was appointed by the Steering Committee with the remit to create, develop and draft the contracts to be negotiated with the preferred bidder; liaise with the technical team responsible for the preparation of detailed service delivery specifications and requirements; manage and lead discussions with the preferred bidder with respect to the contracts being drafted; and complete a set of mutually agreed contracts based on these discussions. Information on each of the contracts was provided in the report;
- c on the concession agreement, its purpose, the requirements it imposed on the Concessionaire, the conditions that were to be met prior to signing, as well as its salient points were outlined. The report stipulated the procedure to be followed on the expiry of the term and outlined that if Government requested the title of the KGRH and the GGH prior to the expiry of the term, it was subject to the payment of €80,000,000, which value was the estimated net book value at the end of the 30-year period. In the event of Government terminating the agreement for no reason or defaulting, the Government would incur the payment of the Concessionaire's lenders' debt and an additional €100,000,000 payment to the Concessionaire. Also noted was that the Government would incur the payment of the Concessionaire's lenders' debt in case of a non-rectifiable event of default entitling it to terminate the Agreement;
- d regarding the health services delivery agreement, the report outlined its salient points, including the health care services to be provided at the hospitals, noting that the detailed services were being fine-tuned and would continue to be refined during the implementation of the project; the ancillary services, the quality of service to be provided by the Concessionaire and the Quality and Assurance Board (QAB); service levels and key performance indicators (KPIs); the charges the Government would incur, noting that

additional services were to be charged at list prices less 30 per cent; the key roles to be maintained by the Concessionaire; and management of breaches;

- e information on the main provisions of the labour supply agreement and the emphyteutical deed was also provided; and
- f the report also noted that the Concessionaire had intimated its intention to use reputable financing institutions to finance the project. As a result, the Government would be required to sign direct and collateral agreements with the Concessionaire and the institutions. It was further noted in the report that while the principles of these agreements had been discussed (no additional information in this respect was provided in the report), it was the norm that financing institutions would have their own legal advisors who would provide their input on the principles discussed.

2.1.71 The context and developments cited in the report led the NAO to the conclusion that this document, although undated, was likely drawn up towards the end of the process of negotiations. Queries raised by the NAO regarding this report were addressed to the CEO BEAT Ltd and the Partner RSM, who informed this Office that the report was possibly also submitted to the Steering Committee; however, no details or documentation supporting this statement were made available.

2.1.72 While the grave shortcomings highlighted earlier 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 considerations are by implication also excluded. The NAO sought to determine whether the negotiated contractual framework reflected a deal that corresponded to the objectives set for the project; whether Government obtained a good price for the quality of services and assets that were to be provided; and whether the contractual framework appropriately allocated risk between the public and private sectors. This Office was not provided with any evidence of these critical aspects of the concession being considered by the Negotiation Committee.

2.1.73 In view of the absence of any documentation generated by the Negotiation Committee, the NAO sought the views of the Committee on matters highlighted in the preceding paragraph. The Negotiation Committee maintained that the contractual framework regulating the concession was of benefit to Government, and argued that it was the responsibility of those implementing its provisions to ensure that all the necessary safeguards and monitoring tools were utilised to attain the outputs listed therein. This perspective was mirrored by the PS MOT. A key point raised by the Negotiation Committee in its submissions to the NAO was the context within which the concession was issued, wherein it was stated that one could not ignore the poor state the hospitals were in prior to the concession. Moreover, the Negotiation Committee indicated that the Government had entered in an agreement with the QMUL to provide a fully-fledged hospital even though Government was, at the time, in excessive deficit procedures. When confronted by the NAO on the various shortcomings of the Negotiation

Committee, the Committee sought to shift responsibility on the MFH, indicating that it was the Ministry that failed to adequately implement the contractual framework regulating the concession, contending that this situation could have been averted had the required experts been engaged. The MFH vehemently contested this claim; however, more on the matter of implementation is presented in Chapter 6 of this report. Notwithstanding that stated by the Negotiation Committee, concerns do emerge in relation to its work. This Office's analysis of the contractual framework and its alignment with the objectives of the project and that bid by the VGH is presented in Chapter 5. In addition, the NAO reviewed the allocation of risk between the public and private sector, relying heavily on the expert analysis undertaken by the National Statistics Office (NSO), which assessment is presented Chapter 7.

2.2 Authorisation of the negotiated changes

2.2.1 The NAO sought to obtain information on the authorisation of the negotiated changes. As elaborated on in Part 1 of this report, in the Memorandum presented to Cabinet on 21 June 2015 by the Minister for Energy and Health, 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.

2.2.2 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. Queried in this respect, the CEO BEAT Ltd and the Partner RSM were adamant that the Negotiation Committee was not taking any decisions but was merely ensuring consistency between the RfP and that sought by Government through this concession by formulating clauses that both parties agreed on. Moreover, the Negotiation Committee contended that its role was restricted in this sense since it had no technical expertise and therefore could not decide on certain elements of the agreements that were certainly beyond its competence. Although the Negotiation Committee maintained that the Steering Committee was overseeing its work throughout the process, the NAO noted that the oversight of negotiations undertaken was not appropriately documented, with the minutes of the Steering Committee lacking key details in this respect. While conceding that this process was not adequately documented, the CEO BEAT Ltd and the Partner RSM maintained that the Steering Committee enquired about negotiations and delved into the outcomes that were to be secured through the concession. In the understanding of the Negotiation Committee, since the technical details related to the health services were developed and approved by the MEH-Health, it was unnecessary to refer to the Steering Committee in this respect.

- 2.2.3 The CEO BEAT Ltd also informed the NAO that the draft contracts that Government was to enter with the VGH were referred to the Attorney General for review. Queries to this end were directed to the Attorney General who confirmed that, on 25 August 2015, draft copies of the SCA were submitted to her Office. No further information was provided by the Office of the Attorney General and therefore the NAO was unable to ascertain whether a review was undertaken by the Office of the Attorney General, and in the affirmative, to what end. Nevertheless, the Attorney General confirmed that advice was provided to the Prime Minister on the 9 March 2016 in relation to the transfer of the sites, yet did not disclose further details, citing professional secrecy. In view of this, the NAO sought to obtain the advice provided through the OPM. Despite requests to this effect, the Principal Permanent Secretary informed the NAO that no such document was traced at the OPM registry.
- 2.2.4 The Negotiation Committee contended that in negotiations with the VGH, it was clear to all parties that, ultimately, the contracts were subject to Cabinet’s approval. The Committee stated that Cabinet eventually approved the concession as negotiated.
- 2.2.5 In a meeting held on 13 October 2015, Cabinet was informed by the Minister for Energy and Health that the SCA, the HSDA, the LSA and the Emphyteutical Deed were finalised. Cabinet was also informed that another agreement dealing with the financial aspects of the concession was still to be concluded.
- 2.2.6 On 27 October 2015, Cabinet was then informed by the Minister for Energy and Health that all the main contracts were negotiated. Noted in the minutes of the meeting was that Cabinet agreed that the Minister for Energy and Health would sign the contracts and that Government would provide access to the sites so that works could commence. Of note to the NAO was the reference made to the appendices to the HSDA, wherein the following was stated, “Kien negozjat ukoll ftehim ta’ kunsinna tas-servizzi tas-saħħa li jistabilixxi fost oħrajn il-ħlasijiet mitluba lill-Gvern għall-użu tas-sodod u servizzi tal-kura tas-saħħa. Hemm diversi appendiċi, inkluż fuq iżjed sodod.”¹
- 2.2.7 The implications of the final sentence from this excerpt prompted the NAO to enquire whether Government was already aware of the addenda that would be signed shortly after the main agreements, one of which corresponded to the additional beds that would be sourced. An element of context was provided by the Negotiation Committee, when explaining that after the main agreements of the concession were finalised, changes were discussed around September to October 2015. The parties agreed that the amended clauses would be introduced by means of an addendum and presented to Cabinet for approval.
- 2.2.8 The perspective of the Negotiation Committee was corroborated by the PS MOT, who stated that the addenda reflected further negotiations held after the finalisation of the contracts and

¹ Also negotiated was an agreement of the health services to be delivered that established, among others, the payments due by Government for the utilisation of beds and health care services. There are several appendices, including about additional beds.

were specifically approved by Cabinet on 27 October 2015, simultaneous with the approval of the main concession agreements. In addition, the PS MOT noted that stakeholders were, at this stage, engaged in discussions with the VGH as the fees being charged were being considered in line with costs being incurred by the MDH and therefore attention was directed towards ensuring that the cost level was maintained. It remained unclear to the NAO who the stakeholders that the PS MOT was referring to were.

- 2.2.9 Queried on whether Cabinet was sufficiently briefed regarding the concession, the CEO BEAT Ltd contended that, in view of the short time frame in which the agreements had to be concluded and the fact that negotiations with the VGH were intensive, approvals were sought following the conclusion of negotiations rather than intermittently during the process. The CEO BEAT Ltd argued that the Negotiation Committee established a position and presented its rationale in arriving at such a position to Cabinet. While noting that this position was eventually approved by Cabinet, the CEO BEAT Ltd asserted that Cabinet was free to object if it deemed appropriate. The PS MOT similarly acknowledged that approvals were not sought for every major change in the contracts, but a collective approval for the finalised contracts was obtained from Cabinet. Further queried by the NAO as to whether the Negotiation Committee was provided with parameters of negotiation in relation to specific contractual provisions, the PS MOT asserted that the Committee was tasked with bringing the concession agreements to a close and that the final provisions were presented to the Steering Committee and Cabinet in detail and approved without reservations.
- 2.2.10 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 signing the contract to ensure that the project's objectives were met.
- 2.2.11 Queries to this end were also put to Projects Malta Ltd. In a reply submitted on behalf of Projects Malta Ltd, the PS MOT stated that such a review was conducted at Cabinet level and maintained that the Minister for Energy and Health presented the entire negotiated deal to Cabinet.
- 2.2.12 Notwithstanding this, concerns emerged in submissions to the NAO by the PS MFIN and the PS MFH on this matter. The PS MFIN informed the NAO that the Minister for Finance was only aware of the material that was presented to 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. This statement by the PS MFIN was rebutted by the PS MOT when stating that although there might not have been the specific involvement of the PS MFIN, discussions were carried out at a higher level and that Cabinet was constantly informed of developments. The PS MOT also referred to the fact that the disbursements being made by Government in relation to this concession were included in the Government's budget, hence implying the awareness of the PS MFIN.

- 2.2.13 A similar reply to that submitted by the PS MFIN was received from 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 representative of senior management, hence endorsement in this respect was certainly lacking. 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. Issues in the interpretation of these obligations immediately emerged, resulting in the MFH organising meetings with the VGH to address such matters. Reacting to that stated by the PS MFH, the PS MOT argued that one could have asked for information and to be included further in the discussions. The NAO noted that the Minister for Health and the PS MFH – then Parliamentary Secretary for Health and PS MEH-Health, respectively – were generally included in correspondence between the local medical team and Weightmans relating to the drafting and review of health service requirements. The correspondence reviewed cast doubt on the extent of involvement of the MEH-Health in the processes leading to the finalisation of the concession agreements. The doubt persists solely with respect to the contribution of MEH-Health in terms of the determination of health service requirements but not in relation to the establishment of the broader commercial contractual terms, where the Ministry’s absence is conspicuous.
- 2.2.14 The PS MOT maintained that distancing oneself from the project was not the way to carry out one’s duties and address concerns. Elaborating in this respect, the PS MOT referred to the possible factions within the MEH that resisted the change that was to be brought about by the concession and their reluctance to implement necessary changes, further commenting that the concession could only be successful if all parties were invested in the relationship and sought to ensure its success. Nevertheless, the PS MOT explained that the implementation of the operability of the contracts was then left solely in the hands of the Health division, emphasising the fact that his role in the whole process was always a peripheral one, while other aspects of implementation such as the setting up of the Medical School were being monitored by Projects Malta Ltd and Malta Enterprise.
- 2.2.15 That stated by the PS MFH was corroborated by the Minister for Health, then Parliamentary Secretary for Health. The Minister for Health confirmed that neither he nor the MEH-Health, which division was his responsibility at the time of the concession, were ever involved in the process of negotiation with the preferred bidder and that the MEH-Health was faced with a signed concession agreement. Again, the PS MOT contested this perspective, arguing that there was one Minister responsible for energy and health, and therefore the MEH-Health could not state that this division was not included in the process. The Minister for Health contended otherwise, stating that the then Minister for Energy and Health was responsible for providing direction as to which division was to be involved in the process of negotiation. In this case, the Minister for Health noted that the MEH-Health was excluded from this process, a fact corroborated by the composition of the Negotiation Committee. In turn, the PS MOT

asserted that the Negotiation Committee was primarily tasked with the drafting of contracts, which responsibility required financial and commercial competence rather than technical or clinical competence. The PS MOT further explained that the Negotiation Committee sought technical input on health-related issues, especially in relation to the schedule of services. In this context, specific reference was made by the PS MOT to the involvement of the Minister for Health, the PS MFH, the heads of the hospitals and other consultants within MEH-Health. Although the correspondence made available to the NAO was limited, evidence of the involvement of the Parliamentary Secretary for Health in matters relating to the establishment of requirements associated with the concession's contractual framework in such correspondence corroborated that asserted by the PS MOT.

2.2.16 Notwithstanding the concerns expressed in the preceding paragraph, the Minister for Health maintained that he viewed this concession as a possible solution to the difficulties that the MFH was facing, that is, the treatment of patients in corridors, the reduction of waiting times at the emergency department and the reduction of lengthy waiting lists for various health services. In addition, the economic benefits that Malta sought to realise through medical tourism and the setting up of a prestigious medical school were considered significant advantages of the concession as originally envisaged. Moreover, the Minister for Health referred to the added benefit presented by the Barts Medical School, particularly in terms of the increased capacity of doctors that were to be made available. It was in this context that the Minister for Health noted that if the MEH-Health were invited to contribute to the development of the project, they would not have turned down the offer to participate.

2.2.17 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 MFH 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.

Chapter 3 | The initial contractual framework

- 3.0.1** The Transaction Agreements, namely the SCA, the HSDA, the LSA and the Emphyteutical Deed and amendments and/or addenda thereto outlined the terms that were to regulate the hospitals' concession to the VGH.
- 3.0.2** 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. In addition, the SCA regulated the management and administration of the sites. The HSDA regulated the services to be provided by the VGH, which comprised the healthcare/clinical and ancillary non-clinical services that were to be delivered at the sites. Furthermore, stipulated in the HSDA were the annual minimum charges for the sites. The LSA allowed for the supply of Government's employees to VGH Management Ltd in order for the latter to meet the terms of the Transaction Agreements. Another Agreement for the payment by VGH Management Ltd of an additional concession fee was also entered into. Lastly, the Emphyteutical Deed regulated the granting of the sites at the GGH, the SLH and the KGRH, intended for use by the VGH to achieve the various policy objectives set by Government.

3.1 Services Concession Agreement

Background to the Agreement

- 3.1.1** 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 2015.² The Agreement was to become binding from the commencement date, that is, the date of its execution; however, all rights and obligations were only operative as of the effective date, which date is elaborated on in the ensuing subsection of this report. The scope of the SCA was for the Government to grant VGH Ltd and VGH Management, collectively referred to as the Concessionaire, the concession. While the Concessionaire was formed by two separate companies which could share rights, duties and obligations in the execution of the Agreement, they were jointly and severally liable for the performance of its obligations.
- 3.1.2** The concession was defined in the Agreement as:
- a** the exclusive right to develop, design, engineer, monitor, procure, finance, construct, equip, operate, maintain, embellish and manage the sites; and

² Reference to Vitals Global Healthcare Ltd, VGH Assets Ltd and Vitals Global Healthcare Management throughout the agreement included their permitted and lawful successors and assigns.

- b 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 in terms of the Transaction Agreements.

3.1.3 The SCA provided details on the concession granted, particularly the redevelopment and improvement programme that the Concessionaire was to carry out on the sites, and the requirements relating to the day-to-day management and administration of the sites in the immediate term and for the remainder of the concession period of 30 years from the Agreement's effective date. The Agreement was to terminate automatically on the lapse of the concession period, which period was to stand unless terminated earlier in line with any provision of the SCA or by mutual written consent of the parties.

3.1.4 The rationale for the concession was noted in the SCA itself. The Government intended to enhance the national healthcare services and achieve the highest standards possible while upholding the availability of free healthcare services to end users. The provision of high quality, continuous and coordinated healthcare, convalescence and ancillary services to end users carried multiple benefits for the Maltese population and the Maltese economy. Of note was that the Government recognised that the involvement of a private sector operator having sufficient levels of technical competence, fitness, integrity, operational and infrastructural experience and financial soundness was crucial to fund the necessary developments and operate the healthcare facilities to realise the intended improvement. The Government wanted to undertake a substantial capital redevelopment project aimed at developing existing national healthcare resources and sought to implement this project through the grant of a concession.

3.1.5 The policy objectives of the Government for the redevelopment of the sites and granting of the concession were:

- a the redevelopment, maintenance, management and operation of the sites;
- b the supply of healthcare services by the Concessionaire to the Government for the benefit of end users; and
- c the development of the local service offering to target a regional market of prospective users on an elective and non-elective basis.

3.1.6 The grant of the concession required the achievement of the Government's key ancillary policy objectives including the construction of:

- a a medical school to be operated and managed by QMUL Malta;
- b a university-level educational institution offering teaching and qualifications in nursing – the Concessionaire was also tasked with, subsequent to consultation with the

Government, identifying the operator who was to manage the institution;

- c a state-of-the-art research and development facility for the healthcare sector; and
- d a Regional Primary Care Hub (Health Centre) at the GGH, to be operated by the Concessionaire.

3.1.7 Subject to the terms outlined in the Agreement, the Government granted the Concessionaire the right to provide healthcare and ancillary services from the sites to it and to third parties. To enable the provision of the intended services, the Government also granted VGH Assets Ltd real rights over the sites in terms of the Disposal of Government Land Act and pursuant to a public deed in consideration for the redevelopment of the sites, the payment of ground rent and the obligation to maintain and invest in the sites throughout the concession period. The Concessionaire was not to be compensated for the development and ongoing maintenance of the sites.

3.1.8 Following the redevelopment of the sites to the standard stipulated in the SCA, the Concessionaire was required to provide consistent, reliable and uninterrupted healthcare services of the standards outlined in the HSDA. The Government would be acquiring services from the Concessionaire throughout the concession period to complement the existing public healthcare framework. In this respect, beds, as well as other facilities and additional services at each of the sites were required to be made available to the Government. Beds, facilities and services capacity not reserved for use by the Government could be offered by the Concessionaire to medical tourists.

- 3.1.9 The SCA also provided an understanding of the scope of the concession, namely:
- a the provision of the services required under the SCA and the HSDA in line with applicable legislation and the Transaction Agreements;
 - b the takeover of the management, maintenance and operation of the sites in line with applicable legislation, the Transaction Agreements and the maintenance requirements set out in the SCA;
 - c the construction and, where applicable, redevelopment of the sites in line with the relevant provisions of the Transaction Agreements, including those related to the design and redevelopment requirements;
 - d the construction of the medical college at the GGH in compliance with the QMUL Malta contractual undertakings and the specifications of equipment to be procured by the Concessionaire, as set out in the SCA;

- e the construction of the nursing college at the SLH in line with provisions in the SCA;
- f the procurement, installation and operation of assets, acquired by the Concessionaire in terms of the SCA or after the SCA's effective date to be used in the performance of the obligations assumed by it under the Transaction Agreements, in conformity with the maintenance requirements set out in the SCA and the Transaction Agreements;
- g the management of staff employed by the Government and leased to the Concessionaire in terms of the LSA and the fulfilment of the LSA's obligations;
- h the provision of medical tourism authorised by the Government in terms of the Transaction Agreements;
- i the running of any ancillary commercial activities as may be authorised by the Government from time to time in writing; and
- j the performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of the Transaction Agreements.

Effective date

3.1.10 The SCA included provisions in relation to its effective date, that is, the date of satisfaction or waiver of the following conditions precedent:

- a the provision by the Concessionaire of a performance guarantee satisfactory to the Government in terms of the provisions of the SCA;
- b delivery by the Concessionaire of a certified true copy of the Concessionaire's register of members and directors as at the date of the SCA;
- c delivery by the Concessionaire of an extract of a fully executed resolution in writing passed by all the Concessionaire's shareholders in the form substantially agreed to by the parties and certified as a true and faithful extract thereof by the Concessionaire's company secretary and authorising the signatories to this Agreement to appear on behalf of the Concessionaire;
- d delivery by the Concessionaire of a copy of the Concessionaire's memorandum and articles of association certified as a true copy by the Concessionaire's company secretary;

- e the provision by the Concessionaire of an undertaking in writing that as at the date of the SCA no default events by the Concessionaire in terms of the SCA or default events or equivalent in terms of the Transaction Agreements remained in force;
- f the HSDA had been entered into and had become unconditional in accordance with its terms;
- g the Emphyteutical Deed was validly executed and entered into;
- h provision by the Concessionaire of copies of the insurance policies it was required to take out in terms of the SCA;
- i provision by the Concessionaire of evidence that the primary lenders financing the concession were in place and of a signed copy of the Financing Agreements, consented to by the Government and entered into by the same primary lenders and the Concessionaire;
- j provision by the Concessionaire of a copy of the contract with the engineering, procurement and construction (EPC) contractor, namely Shapoorji Pallonji or such substitute as could be appointed by the Concessionaire in line with the provisions of the SCA, engaged to conduct the works;
- k the parties obtaining all required consents to carry out the obligations in the Transaction Agreements;
- l the parties agreeing on additional services to be included as approved services by the Government; and
- m the parties compiling and finalising a handover plan for the smooth transition of the activities and operations conducted by the Government at the GGH and the KGRH.

3.1.11 The conditions precedent were to be satisfied as soon as practicable, and by not later than 180 days from the commencement date. While the parties were to cooperate fully to satisfy these conditions, they could waive any of the conditions, if legally entitled to do so, by written mutual agreement signed by all of them. The effective date would not be realised until the conditions precedent were satisfied or waived and the rights and obligations arising from the SCA would not be operative until the conditions were achieved. If the effective date was not achieved by 180 days from the commencement date, the parties were to seek to agree on an additional period within which the outstanding conditions were to be satisfied.

Emphyteutical grant of the sites

3.1.12 On the effective date, VGH Assets Ltd was to assume responsibility for the sites and the assets.³ As of this date, the Government was to grant VGH Assets Ltd, by title of temporary emphyteusis through the Emphyteutical Deed, the sites as is for use by it and/or the Concessionaire, for the provision of the services required to be given under the SCA and the HSDA.

Concession milestones

3.1.13 Figure 4 outlines the concession milestones that the Concessionaire was to attain in terms of this Agreement.

Figure 4 | Concession milestones

Concession milestone	Schedule
Handover plan	120 days from the commencement date
Design plans	90 days from the effective date
50 additional beds for KGRH at SLH	1 January 2017
Barts College in Gozo Campus	1 July 2017
80 Rehabilitation beds for SLH	30 September 2017
Completion of new build at GGH	31 May 2018
Completion of renovation of GGH	30 September 2018
Completion of SLH Tourism Beds	31 December 2018

3.1.14 A concession milestone would be deemed to have been achieved if the works relating to it were duly and successfully completed in line with all the requirements listed in the SCA and if all systems and medical equipment and furniture forming part of the works to be carried out as part of a concession milestone by the Concessionaire were properly installed, commissioned and certified. Following the achievement of a concession milestone, a services commencement certificate was to be issued. The date on which such certificate was issued was to be termed the services commencement date. Furthermore, the term ‘completion date’ was used in the SCA to denote the date when the certificate of final completion, confirming that the concession milestones had been reached and that the works had been carried out, was issued. 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.

³ The SCA defined the term ‘assets’ as those acquired by the Concessionaire in terms of the SCA (or those acquired after the effective date) to be used by the Concessionaire in the performance of obligations assumed by it under the Transaction Agreements including:

- a any medical equipment;
- b any books and records (including operating and maintenance manuals, health and safety manuals and other know-how) relating thereto;
- c any spare parts, tools and other assets (together with any warranties in respect thereof); and
- d any contractual rights thereto.

Any and all movable assets belonging to the Concessionaire before the commencement date, all records and data relating to medical tourism, revenues due to the Concessionaire in relation to any and all assets as from the effective date and until termination of the SCA and the charges payable by the Government to the Concessionaire pursuant to the HSDA were to be excluding from the meaning of the term ‘assets’.

Medical college

3.1.15 The SCA included provisions in relation to the medical college which the Concessionaire was to build. In this respect, the Concessionaire was responsible for:

- a its design; and
- b the execution of works in accordance with the requirements of QMUL Malta and the Government's redevelopment requirements included in the SCA, the concession milestones, the medical licence for the hospital to operate and other licences which could be required in relation to the concession or for any other purpose related or ancillary thereto. The Agreement listed equipment in relation to the requirements of QMUL Malta. Such equipment was to be procured and installed by the Concessionaire.

3.1.16 The Government was to be granted a title of lease over the medical college on the issue of the relevant services commencement certificate. This was not to affect or diminish VGH Assets Ltd's title over the medical college, granted to it by virtue of the Emphyteutical Deed.

Nursing college

3.1.17 The SCA also listed the obligations of the Concessionaire and the Government in relation to the nursing college. The Concessionaire was to design, construct, equip and operate a fully-licensed university level nursing college at the SLH within 48 months from the effective date. If the operation of the nursing college was to be outsourced, the Concessionaire was to consult a third-party operator in consultation with the Government. Furthermore, the Concessionaire was to source and manage competent and proficient healthcare professionals and supporting staff to meet the teaching requirements of the college. The Concessionaire was also to ensure that the nursing college had a capacity of at least 100 students per academic year based on an assumed course duration of three years.

3.1.18 The SCA further provided that the Government was to assist the Concessionaire to obtain the necessary licences required for the construction, development and operation of the college. If any licence was not issued due to circumstances and/or events beyond the control of the Concessionaire, the Concessionaire was to be released from its obligations in this respect.

Handover plan

3.1.19 The SCA also provided for the agreement on a handover plan for the smooth transition of the activities and operations conducted by the Government at the GGH and the KGRH, which plan was to be implemented on the commencement date. An agreement on the handover plan was to be reached by the effective date, provided that the period contemplated for its full implementation was not to exceed three months.

Sale of movables

3.1.20 Through the SCA, the Government sold, transferred and delivered to the Concessionaire, as of the effective date, all the movable objects that belonged to it and were present on the sites as at the commencement date, with the exclusion of those movable objects donated by local charitable organisations and EU funded ones. The Concessionaire paid €1 to the Government for this sale, which was carried out to permit the continuance by the Concessionaire of the activities and operations of the sites in line with the handover plan. The sale and purchase were made on an 'as is where is' basis and the movable objects were sold and purchased 'tale quale' with no warranty for latent defects. The Government was entitled to buy back the movables for €1 on the lapse or early termination of the concession period.

Non-corporeal assets

3.1.21 The SCA also included provisions with respect to the assignment of non-corporeal assets, including credit and liabilities, litigious rights and rights of action and assumed contracts. Any rights of credit in favour of and liabilities of the Government in respect of ongoing activities and operations run at the sites up to the effective date belonged to the Government and were not to be transferred to the Concessionaire.

3.1.22 Furthermore, all litigious rights and rights of action relating to ongoing activities and operations at the sites up to the effective date were also exercisable by and to keep belonging to the Government. On the other hand, subject to the applicable law and the Transaction Agreements, litigious rights and rights of action arising after the effective date were to be exercisable by and pertain to the Concessionaire with no responsibility or liability on the Government.

3.1.23 The SCA also noted that the parties were to, in accordance with the applicable law, procure by novation or assignment the substitution by the Concessionaire on Government agreements with third parties that were currently in force regarding the Government's operation of the sites. Twenty-three of these agreements were listed in the SCA, and included contracts in relation to catering services, provision of clerks and care workers, electrical and water services, religious services, construction and supply of products related thereto, and servicing, maintenance and repair of hospital equipment. Government was to consent or acknowledge, as required, any such novation or assignment. If the parties failed to procure the substitution by the effective date, within ten days from this date, the Concessionaire was to enter into negotiations with the respective third party appearing on the contracts in respect of which the substitution remained outstanding to agree on an arrangement satisfactory to the parties.

Operation of the sites

3.1.24 The SCA also included provisions regarding the operation of the sites. The Concessionaire was to provide the services it was obligated to offer under the HSDA from the date of issue of the relevant services commencement certificate and thereafter throughout the concession period in line with the terms of the HSDA and the SCA. Furthermore, the Concessionaire was to ascertain that the services required under the SCA were performed and that the sites were operated and maintained by appropriately qualified and trained workers employed by the Concessionaire in the performance of its obligations under the Transaction Agreements⁴ in accordance with the terms of the SCA, the applicable law and good industry practice in satisfaction of the operation and maintenance requirements.

Maintenance of the sites

3.1.25 Extensive provisions regarding the maintenance of the sites were included in the SCA. In this respect, the Concessionaire was to continually make certain that its operation and maintenance procedures ensured that:

- a the sites were fit for use in accordance with the SCA's requirements;
- b the assets were maintained to achieve their full serviceable life; and
- c such assets were handed back to the Government on the lapse of the concession period or its earlier termination in a condition complying with the hand-back process outlined in the SCA.

3.1.26 Any maintenance that could cause disruption or inconvenience to the normal operation of the sites was to be scheduled to occur at a time to minimise disruption. Furthermore, the Concessionaire, in consultation with the Maintenance Monitoring Board (MMB), was to prepare a repair and maintenance manual for the regular and preventive maintenance of the sites in conformity with the operation and maintenance requirements and good industry practice by not later than 90 days prior to the completion date. One copy of the manual was to be provided to the MMB. The MMB was to review and convey its comments on the manual within 30 days of its receipt and the Concessionaire was to modify it in accordance with these comments. The manual, which was to outline the preventive, scheduled and unplanned or emergency maintenance provisions, was to be revised and updated once every two years.

⁴ The SCA's definition of workers excluded government employees leased in terms of the LSA.

3.1.27 The Concessionaire was also to submit to the MMB for approval:

- a by one month prior to the scheduled service commencement date, a planned maintenance programme for the remaining part of the year in which the service commencement date occurred for the sites and the assets;
- b by two months prior to the beginning of each year thereafter, a planned maintenance programme for the sites and the assets for that year. Each planned maintenance programme was to at least include:
 - i an annual preventive maintenance schedule;
 - ii arrangements and procedures for carrying out urgent repairs, where urgency was defined in the SCA as a situation causing a serious threat of danger to life, or personal injury or damage to the sites;
 - iii the criteria to be adopted to determine maintenance needs;
 - iv the frequency and procedures for carrying out inspection of all elements of the project to identify any potential areas in need of urgent maintenance and repair;
 - v the frequency with which the Concessionaire was to carry out periodic maintenance;
 - vi arrangements and procedures for carrying out safety-related measures;
 - vii items of equipment expected to be rendered out of service for an overhaul and the expected period for which such equipment was to remain unavailable for use;
 - viii proposed dates and timeframes for carrying out major maintenance and overhaul works;
 - ix a list of equipment approaching the end of its serviceable life;
 - x reasonable detail regarding all maintenance (including lifecycle replacement and maintenance) or repair works to be carried out in respect of the sites in the relevant year and a proposed start date and end date for each material element of such works; and
 - xi a provision that any such works that may cause any disruption or inconvenience to the normal operation of the sites would be scheduled to take place at a time to minimise, so far as reasonably practicable, such disruption.

3.1.28 It was further noted in the SCA that waterproofing systems on new buildings were to have at least a 10-year guarantee. Every year, throughout the concession period, each system was to be visually inspected and a written report of each system was to be submitted. Furthermore, facades were to be visually inspected every year through annual walk-throughs and maintenance/repairs to facades were to be conducted every six years or when it was deemed necessary throughout the concession period. Furthermore, main corridors and foyers were to be painted at least every five years.

3.1.29 In addition, noted in the SCA was that the MMB was to have the right to require changes to be made to the planned maintenance programme if the programme fell short of the operation and maintenance requirements outlined in the Agreement. If the planned maintenance programme was revised by the MMB, then it would be applicable for the relevant year. Moreover, the Concessionaire was to notify the MMB of any changes made to the planned maintenance programme.

3.1.30 The SCA also provided for maintenance monitoring and reporting. It was noted that the Concessionaire was to, on a monthly basis and by not later than five days after the end of the previous month, report to the MMB on all preventive, emergency (due to lack of safety at the sites), or urgent maintenance actions that had been carried out during that month in a monthly maintenance report. In the monthly reports, the Concessionaire was to indicate any deviations from the planned maintenance programme for that month and provide justifications for such deviations. The Concessionaire was also to indicate whether emergency and/or urgent repairs were actioned or not. If emergency and/or urgent repairs remained unresolved, the Concessionaire was to provide appropriate justification to the MMB. Moreover, the Concessionaire was to report on other matters as could be instructed by the MMB from time to time. The MMB was to review the monthly report submitted by the Concessionaire and identify and determine any breaches by the Concessionaire and direct the Concessionaire to rectify them. Any identified breach was to be considered rectifiable if it did not meet the criteria for a non-rectifiable default set out in the SCA. The MMB was to establish periods for the rectification of any breaches in line with best industry practice accounting for the urgency and impact of the breach on the health, safety and security of the users and the impact such breaches would have on the obligations of the Concessionaire under the HSDA.

Operational structure

3.1.31 The SCA provided a governance structure to ensure that the Agreement's obligations were fulfilled. The following operational bodies were to be set up through the Agreement to appropriately administer and fulfil such obligations:

- a the Health Construction Committee (HCC);
- b the Health Management Committee (HMC);

- c the PMB; and
- d the MMB.

The Health Construction Committee

3.1.32 The HCC was appointed to represent the interests of the Government during the period within which works were to be carried out by the Concessionaire on the sites in accordance with the SCA's requirements and was to be composed of members appointed by the Government. Furthermore, the composition, structure and proceedings of this Committee were to be managed internally by the Government. The SCA stipulated that the HCC was entitled to exercise the rights conferred to the Government under this Agreement and was to be the Concessionaire's point of contact in relation to the works to be carried out by the Concessionaire on the sites. Additionally, all reports produced by the Concessionaire during and in relation to such works, which were required to be delivered to the Government, were to be delivered to the HCC.

The Health Management Committee

3.1.33 The HMC was to represent the interests of Government following the completion date of the first concession milestone and was also to be composed of members appointed by the Government. The composition, structure and proceedings of the HMC were also to be managed internally by the Government. Like the HCC, the HMC was entitled to exercise the rights conferred to Government under this Agreement and was to be the Concessionaire's point of contact for the purposes of the SCA following the completion date of the first concession milestone. All reports produced by the Concessionaire following the completion date of such concession milestone, which were required to be delivered to the Government, were to be delivered to the HMC.

The Project Monitoring Board

3.1.34 The SCA stipulated that a PMB was to be set up by not later than the effective date and was to be composed of five to seven members. It was to convene at least every two weeks to discuss reports prepared and submitted to its attention by the Concessionaire. The PMB was to include the following members:

- a three representatives of the Concessionaire, of whom at least two were to be experts in engineering and/or architecture;
- b one representative of the Government; and
- c one representative of QMUL Malta.

3.1.35 The SCA included the minimum terms of reference of the PMB, namely:

- a to monitor the progress achieved with respect to the works being carried out by the Concessionaire on the sites;
- b to approve changes in the works programme;
- c to approve changes and variations in the scope of works provided that such changes did not impact the requirements of QMUL Malta and the designs relating to the project⁵;
- d to approve changes in subcontracts other than with respect to subcontractors considered to be material, that is, any contract related to the information technology (IT) supplier, or any contract or number of contracts to a contractor relating to clinical services and/or management of services exceeding 20 per cent of the annual minimum charges payable in terms of the HSDA for the related sites;
- e to escalate any matters affecting the designs, the requirements of QMUL Malta and the Government's redevelopment requirements to the HMC;
- f to ensure that the obligations of the Concessionaire were being fulfilled appropriately;
- g to issue a proposed milestone Service Commencement Certificate (subject to the Government's rights under the SCA);
- h to request rectification of works on recommendations raised by the third-party expert as appropriate;
- i to define and establish appropriate rectification periods reasonably reflecting the required periods of time necessary for an operator acting reasonably and prudently to rectify a breach;
- j to request appropriate reports to the Concessionaire on various aspects of progress and performance related to its obligations; and
- k to report to the HMC on progress achieved on the works carried out by the Concessionaire on the sites.

⁵ The designs were defined in the SCA as the:

- a detailed schematic designs of the Sites, including architectural and engineering;
- b detailed structural and engineering designs;
- c equipment and installation planning;
- d detailed mechanical and engineering drawings;
- e any surveys that may be required including geo-technical report, as built reports; and
- f milestone schedules.

3.1.36 During the period within which works were to be carried out by the Concessionaire on the sites, the PMB was to issue monthly progress reports no later than seven days after the close of each calendar month which were to include the:

- a overall status;
- b staff assessment;
- c project summary;
- d challenges and key issues;
- e identified risks/health and safety update;
- f tasks and next steps;
- g decisions and consents needed;
- h key future dates; and
- i budgeted cost.

3.1.37 The SCA further stipulated that during the works, the PMB was also to issue quarterly progress reports no later than seven days after the close of each relevant quarter. These reports were to include:

- a all information as per the monthly reports;
- b updates on the concession milestones; and
- c site walk-through reports.

3.1.38 A final report was to be issued by the PMB no later than 15 days following the issue of a services commencement certificate. This final report was to include:

- a an engineering, technical and audit report by the third-party experts appointed by the PMB;
- b any and all compliance or similar certificates required from time to time from any regulatory authority in accordance with the applicable law; and
- c a certificate of final completion.

3.1.39 The Concessionaire was to notify the HCC about the monthly progress reports, quarterly progress reports and the final report within three days from their completion. The SCA further stipulated that reports issued by the PMB did not relieve the Concessionaire from its obligations under the Agreement or of its duty to ensure the correctness, accuracy or suitability of the subject matter of the reports. Moreover, lack of examination by the PMB of the Concessionaire's drawings, documents, calculations, or details relating to the works to be conducted on the sites by the Concessionaire was not in any respect to relieve or absolve the Concessionaire from any obligations or liability under or in connection with this Agreement, including in relation to accuracy, safety, suitability, adequacy of performance or practicality of its design. It was also noted in the SCA that the PMB could withdraw any report if it determined that it had been given materially inaccurate or misleading facts, information or calculations or if material facts, information or calculations were withheld from it when they were known and where, had such facts, information or calculations been given to it, the report would not have been given.

The Maintenance Monitoring Board

3.1.40 An MMB, composed of five to seven members, was to be set up from the effective date. It was to include the following members:

- a three representatives of the Concessionaire, at least two of whom were to be experts in the engineering field;
- b one representative of the Government; and
- c one representative of QMUL Malta.

3.1.41 The minimum expected terms of reference and functions of the MMB were outlined in the SCA. These included:

- a reviewing and determining the activities to be carried out by the Concessionaire based on the annual preventive maintenance plan;
- b ensuring that the Concessionaire's management team was adequately staffed to meet its minimum obligations as specified by the SCA;
- c ensuring that maintenance activities contained in the annual preventive maintenance plan were in line with the maintenance requirements of the SCA;
- d where necessary, require changes to be made to the annual preventive maintenance plan if such activities were not deemed to comply with the maintenance requirements of the SCA;
- e review and monitor preventive maintenance activities carried out during the previous

- month and ensure that actual preventive maintenance activities were carried out as planned;
- f ensure that the Concessionaire adequately prepared a snag list report of all maintenance and repair items that needed to be actioned for timely resolution;
- g ensure that the Concessionaire adequately reported on all emergency breakdowns and provided explanations as to how these had been or were going to be actioned;
- h ensure that all emergency repairs had been duly completed by the Concessionaire within the agreed resolution times;
- i evaluate and consider operations, maintenance and repair issues flagged by the Government and QMUL Malta as members of the MMB. This was without prejudice to the Government's rights to seek redress in accordance with the dispute resolution procedures set out in the SCA;
- j ensure that the Concessionaire adequately prepared a snag list report of all operational issues that needed to be actioned for timely resolution; and
- k review and evaluate the snag list report and, where appropriate, bring recurring issues to the attention of the Concessionaire and seek explanations regarding their recurrence.

3.1.42 The SCA further included the minimum obligations of the Concessionaire's management to satisfy the maintenance requirements, namely:

- a developing and maintaining a maintenance manual;
- b developing and maintaining a planned maintenance programme;
- c carrying out routine planned maintenance to ensure periodic preventive maintenance of the sites;
- d identifying and responding in a timely manner to urgent and emergency maintenance to be carried out as and when required on the sites;
- e carrying out routine repairs required for the purpose of ensuring the continued functionality, health, safety and security of the sites;
- f undertake a major overhaul of medical and other equipment in line with manufacturers' recommendations or in the absence of these, with good industry practice;
- g replacing all equipment at the end of its serviceable life in line with manufacturers' recommendations or in the absence of these, with good industry practice;

- h ensuring compliance with all health, safety and environmental standards and applicable laws;
- i operating and maintaining all project assets diligently and efficiently and in accordance with good industry practice;
- j maintaining a high standard of cleanliness and hygiene at the sites;
- k carrying out all maintenance and repair obligations with minimal disruption to its obligations under the HSDA;
- l maintaining, in conformity with good industry practice, all stretches of approach roads, landscaped areas or other structures falling within the perimeter of the site;
- m ensuring that the sites, in their entirety, were fit for use in line with the SCA's requirements;
- n ensuring that the assets were maintained to achieve their full serviceable life; and
- o ensuring that the assets were handed back to the Government on the lapse of the concession period or the earlier termination of the SCA in a condition compliant to the hand back process requirements set out in the SCA.

Third party experts

3.1.43 The SCA also noted that, from the effective date until the completion date, the PMB was entitled to appoint third party experts possessing technical and/or financial expertise to perform specific functions under the SCA, thereby assisting the Concessionaire to fulfil its obligations under the same Agreement. The Government was to be notified with the proposed appointment of the third party expert and had the right to request an alternative third party expert prior to the appointment. For expediency's sake, the Government was to rely on the findings and reports generated by the third party expert(s) to monitor and control the progress of the works carried out by the Concessionaire on the sites in line with the SCA's requirements as well as ensure the fulfilment of the Concessionaire's obligations under the SCA.

3.1.44 The Agreement also outlined the minimum expected terms of reference and functions of the third-party expert. These included:

- a reviewing and recommending any changes in the scope of the works to be carried out by the Concessionaire on the sites as part of the project to the PMB;
- b reviewing and ensuring compliance of the works with the designs, QMUL Malta requirements and the Government's redevelopment requirements as set out in the SCA;

- c carrying out any tests contractually required in terms of the SCA, and inspections, site visits and surveys as could be required to ensure the quality of work performed by the Concessionaire;
- d issuing service commencement certificates in compliance with the SCA's requirements;
- e issuing provisional service commencement certificates and supporting outstanding items list for completion by the Concessionaire;
- f identifying and reporting any breaches of works carried out by the Concessionaire and maintenance to the relevant Board; and
- g determining and recommending appropriate actions for rectification of breaches including rectification periods to the Board.

Government experts

3.1.45 The Government was also entitled to appoint its own experts for its sole benefit and at its sole expense to enable it to exercise its rights, roles and obligations in relation to the SCA. In line with the provisions of the SCA, Government experts had the right to access the sites and assets. It was further noted in the Agreement that the Government experts were not to have an authoritative role in the SCA other than providing technical advice and assistance to the Government.

The Concessionaire's obligations

3.1.46 The SCA listed the Concessionaire's obligations in terms of the Agreement. The following list provides several obligations which the Concessionaire was to fulfil at its own cost:

- a accept the handover from the Government;
- b accept physical possession of the sites and assets as is;
- c obtain all relevant permits in conformity with the applicable law and comply with the law, permits and licences;
- d procure and maintain in full force and effect appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used in or incorporated into the management, maintenance, development and/or operation of the sites and the services that the Concessionaire was obligated to render in terms of the SCA;
- e procure, finance and undertake the design, monitoring, procurement, construction, redevelopment, equipping, installation, operation and maintenance of the sites for the delivery of the services that the Concessionaire was obligated to render in terms of the

- SCA and observe, fulfil, comply with and perform all obligations set out in the Transaction Agreements;
- f discharge its obligations under the SCA:
 - i in compliance with the applicable law and the licences (including renewals as required);
 - ii in accordance with the schedules to the SCA, which schedules included requirements in relation to the performance guarantee, Government’s requirements in relation to the redevelopment of the sites, requirements by QMUL for the medical college, the concession milestones, termination payments, the parent company guarantee, government contracts in relation to the sites which were already assumed, minimum terms of reference for the PMB and MMB and third party expertise appointed by the PMB, and maintenance requirements; and
 - iii with the due care and diligence of a bonus pater familias.
 - g not place or create, nor permit any others to place or create, any burden or encumbrance, over all or any part of the sites or on any rights of the Concessionaire in or on the sites, except as provided in the Transaction Agreements or as authorised in writing by the Government;
 - h maintain and keep the sites in a good state of maintenance and repair and ensure no damage to them;
 - i be responsible until the hand back process for the safety, soundness and durability of the sites;
 - j observe and fulfil all environmental and other requirements under the applicable law with respect to the concession and indemnify the Government against any claims, penalties and/or damages in respect of breaches of any law or regulation relating to the environment arising out of the operations of the Concessionaire;
 - k ensure that the sites remained free from any encroachments and take all and immediate steps to remove any encroachments;
 - l not sell, transfer, alienate, dispose of or encumber the sites (or attempt to do so) except as provided in the SCA or as authorised in writing by the Government;
 - m not encroach on any land or property adjacent to the sites, whether privately or publicly owned, save for general upkeep duties of sites adjacent to the sites;
 - n maximise the commercial potential of the concession by taking decisions in conformity with the best commercial and industry practice and in accordance with internationally recognised standards;

- o not do or omit from doing anything that may decrease the value of the concession or that may place the undertaking in a state of disrepute or in any other way damage the reputation of the Maltese healthcare industry, the sites or the Government. The Concessionaire was to conduct its activities and operations in such a manner as not to expose or threaten to expose Government to any prejudice, detriment or sanction or involve or threaten to involve Malta in any infringement of any commitments to the EU, international bodies or the international community of nations;
- p invest the annual sum of two per cent of the Concessionaire's yearly profits in environmental enhancement or embellishment projects and/or social projects;
- q maintain, preserve and in no way hinder or diminish unnecessarily the existing rights of access to the sites to maintain, install, perform works on, service or conduct other activities in relation to utilities;
- r permit any authorities to erect physical barriers on the sites at their cost to restrict access thereto for general public safety and security and national security;
- s observe and comply with the applicable law, including all the relevant licences, all the provisions of the SCA, all internationally recognised industry standards, practices, codes and guidelines, all international conventions, treaties and agreements applicable to the activities and operations under the concession;
- t not compete directly with its own activities and operations as Concessionaire under this Agreement to the detriment and prejudice of the Government;
- u be exclusively responsible and liable and punctually pay for the cost of labour, supplies and other services rendered to it in connection with the activities and operations of the concession and be exclusively responsible for any liability resulting from its own acts or omissions during the concession period;
- v give immediate notice to the Commissioner of Land and the Superintendent of Cultural Heritage (SCH) on the discovery of any objects of historical, cultural, antiquarian, anthropological or archaeological importance at the sites, if any (which finds would become Government property);
- w not become directly engaged, concerned, involved or interested in any activity, project, or undertaking bar the activities contemplated by the SCA, unless the written consent of the Government is obtained;
- x perform its duties as Concessionaire and perform its obligations under the SCA with the due care and diligence of a bonus pater familias; and

- y pay the Government a concession fee of €3,000,000 in equal payments over 10 years, the first payment becoming due and payable on the lapse of one year from the effective date.

Obligations of Government

3.1.47 The SCA also included a list of obligations the Government was to comply with, namely:

- a ceding physical possession of the sites and assets in favour of VGH Assets Ltd;
- b effect handover to the Concessionaire;
- c grant assistance and support the Concessionaire to obtain licences and permits required for the concession;
- d observe and comply with all its obligations under the Transaction Agreements;
- e not disturb and/or molest the Concessionaire and/or VGH Assets Ltd in its possession and/or enjoyment of the sites, and not deprive the Concessionaire and/or VGH Assets Ltd of the sites bar as provided in the SCA or in applicable law;
- f acknowledge and accept VGH Assets Ltd's right to encumber the sites in favour of the primary lenders financing the concession;
- g bear all reasonable and standard costs and fees in relation to roads, power, water, and sewage, outside the perimeter of the sites, in relation to this concession;
- h assist and support the Concessionaire to obtain, at its cost, entry visas and/or employment and residence permits, as per applicable law and as could be required during the concession period;
- i secure vacant possession of the sites in accordance with the Emphyteutical Deed, including vacation of the Malta Enterprise property within 24 months from the effective date and of any other occupants of the sites within the agreed timeframes, save as otherwise agreed by the parties in terms of the Emphyteutical Deed;
- j desist from imposing and/or impinging on medical tourism services provided by the Concessionaire, bar as could be required by legislation and/or the relevant regulatory authority;
- k desist from imposing and/or impinging on the services to be provided by the Concessionaire in terms of the SCA and the HSDA, except as provided in the Transaction Agreements;

- l not place or create, or permit any third party to do so, any burden or encumbrance, whether real or personal, over all or any part of the sites or on the rights of the Concessionaire therein or thereon;
- m indemnify and hold the Concessionaire harmless against any claims, penalties and/or damages in respect of breaches of any law or regulation relating to the environment arising from an event preceding the effective date;
- n ensure the sites remain free from any encroachments and to take all and immediate steps to remove encroachments;
- o not sell, transfer, alienate or dispose of or encumber the sites (or attempt to do so);
- p not encroach on any land or property adjacent to the sites, whether privately or publicly owned, except for carrying out as far as permissible general upkeep duties of sites adjacent to the sites to ensure that the approach to and environs of the sites were kept in good order;
- q maintain and in no way hinder or diminish existing rights of access to the sites including for maintenance, installation, performance of works and servicing purposes or for other related activities pertaining to utilities except as necessary in terms of legislation; and
- r permit the Concessionaire to commence the works on and from the effective date.

Performance guarantee

3.1.48 Cited in the SCA were provisions in relation to an unconditional and irrevocable on demand prime bank performance guarantee that the Concessionaire was to provide to the Government in security for the due, proper and punctual performance of all its obligations under the Agreement. The performance guarantee, for €9,000,000, was to be at the Concessionaire's sole cost and expense and issued by a bank licensed to carry out activities in Malta, or in an EU Member State and acceptable to the Government. If the issuing bank was no longer satisfactory to the Government because it was not deemed reputable any longer, it could direct the Concessionaire to provide an alternative performance guarantee under the same terms and conditions within one month from the request date. While the SCA set out a form for the performance guarantee, the guarantee could be in any other format approved by Government. The guarantee was to be kept in force until at least 90 days subsequent to the completion date. Following queries directed to the MOT, the NAO established that 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.

3.1.49 Following the completion date, the Government was to retain €9,000,000 in charges due to the Concessionaire in security of the Concessionaire's obligations under the Transaction Agreements. This was termed the new performance guarantee in the SCA.

3.1.50 Further stipulated in the SCA were provisions applicable in the event that Government called on the performance guarantee or the new performance guarantee, which calls were regulated by the Transaction Agreements and were to be formally notified to the Concessionaire. In this respect, if the performance guarantee or the new performance guarantee were called on in part, the Concessionaire was to cause them to be raised to their original amount. Furthermore, if the sum of the performance guarantee or the new performance guarantee was not enough to satisfy the indebtedness of the Concessionaire towards the Government, the Concessionaire was to pay any excess amount within 30 days from the Government's appropriation. It was further noted that if at the termination of the Transaction Agreements there was a remaining balance on the performance guarantee or the new performance guarantee, the Government was to appropriate any outstanding undisputed amounts due to it and return any balance to the Concessionaire within 30 days from the termination date.

Change of control

3.1.51 The SCA also provided for change of control in the Concessionaire's shares or those of its subsidiaries. It was stipulated that for three years from the completion date, the Concessionaire required the prior written consent of the Government for the transfer, transmission, allotment, assignment or other dispersion of such shares.

Licences and permits

3.1.52 The SCA stipulated various requirements with respect to the procurement of licences and permits, the undertakings of the Concessionaire as a licensee, the approval and integration of licences and amended licences, non-approval of amended licences and the amendment of licences by regulatory authorities. The Concessionaire was to obtain and maintain all relevant permits, licences or regulatory authorisations at its own cost and comply with them throughout the concession period. No works on the sites were to be carried out before all relevant permits and licences were acquired. The medical licence required to operate a hospital in Malta was an exception to these provisions, with the Concessionaire being allowed to take over the existing operations of the sites on the commencement date and operate them under the same conditions of the Government. If the Concessionaire was found to be in breach of the law, the Government would indemnify the Concessionaire in full. The Concessionaire was required to submit licence applications in conformity with the applicable law by the Concessionaire within 30 days from the completion of each concession milestone and, if the Concessionaire failed to do so, it would no longer be entitled to be indemnified by the Government for costs, damages and other losses that could be suffered if it was found to be operating in breach of the applicable law.

3.1.53 The concession milestones were subject to the licences required by the Concessionaire to fulfil its obligations in terms of the SCA being obtained by:

a 15 February 2016 for the SLH and the KGRH; and

b 30 May 2016 for the GGH.

3.1.54 If the licences were not obtained by these dates, the Concessionaire was not to be deemed in default of the concession milestones and the penalties specified in paragraph 3.1.14 of this report would not apply. In this case, the parties would seek to agree on new concession milestones.

3.1.55 With respect to the licences and permits, the Concessionaire committed to:

a not carry out any licensable or regulated activities without possessing a licence;

b remain licenced throughout the concession period;

c manage, operate, develop and maintain the activities and operation of the concession and provide the services that the Concessionaire was obligated to render in line with the SCA and the HSDA in accordance with the licences and not breach their terms;

d comply with the conditions of the licences as could be amended by competent authorities; and

e furnish an appropriately authenticated copy of the licences to the Government by not later than three days from the date of their being granted.

3.1.56 The Concessionaire was to apply for the licences itself. If the licences were obtained, the Concessionaire would not require the Government's consent to carry out the services listed in the HSDA and any other services to be agreed between the parties prior to the effective date.

3.1.57 However, if the Concessionaire required new licences or an alteration to them, the Concessionaire needed a written consent from the Government prior to application or representation. Such request was to be sufficiently detailed to enable the Government to arrive at a reasoned and informed decision on the nature of the new licence or amendment. The Government was to reply to any such request within 30 days from receipt. It was noted in the SCA that where the Government was satisfied that the request was in line with the services to be provided in the SCA and the HSDA, then approval was not to be withheld unjustifiably. If a reply was not provided within the stipulated timeframe, then this would be deemed as consent to the application or representation, provided that written notices

were sent to the Government by the Concessionaire every 15 days. Limited information was provided to the NAO by the MFH in response to queries regarding whether requests for new permits and licences were submitted by the VGH. In this respect, the MFH noted that the VGH informed the Ministry that it had acquired the necessary licences to perform.

3.1.58 The Concessionaire did not require the Government's consent for any licences already approved. It was further noted in the SCA that the Government's approval was not required when a new licence or an alteration was imposed solely by the competent authority. However, in this case, the Concessionaire was still bound to deliver to the Government an appropriately authenticated copy of the new licence or an amended one by not later than three days from the amendment.

3.1.59 If the Government did not reasonably approve the Concessionaire's request for a new licence or an alteration, the Concessionaire was to continue to operate in terms of the approved licences. Any operation conducted in terms of the unapproved request was to be considered as conduct of unlicensed activities and constituted a default event on the part of the Concessionaire.

Design, execution and completion of works

3.1.60 The SCA also included provisions with respect to the works to be carried out on the sites. The Concessionaire was to ensure that all designs required to complete the works stipulated in the SCA complied with the requirements, also included in the SCA, relating to the designs and redevelopment, QMUL Malta's requirements and with the licences. Furthermore, the designs were to serve to achieve the concession milestones and were to be submitted by the Concessionaire to the HCC for approval by not later than 60 days from the effective date. The designs for the construction of the nursing college were to be submitted by the Concessionaire to the HCC for approval by not later than three months prior to the commencement of the construction of the nursing college. In return, the HCC was to formally notify its approval of the designs to the Concessionaire within 15 days from date of receipt. If no such written approval was provided within this period, then the design was to be deemed approved.

3.1.61 The Concessionaire was also responsible for the execution of the works, which were to be carried out in accordance with the SCA's redevelopment requirements, the requirements of QMUL Malta, the licences, the designs approved by the HCC and the primary lenders, and applicable industry standards, laws and regulations. Disruption to existing operations due to the works was to be minimised as far as reasonably practicable without compromising the Concessionaire's obligations in terms of the HSDA. Any material change to the design, the redevelopment requirements or the QMUL Malta requirements needed the HCC's express written consent.

3.1.62 To determine that the works conformed to all the requirements listed in the SCA, the PMB, within 30 days prior to the likely completion of a concession milestone, was to appoint a third party expert to carry out quality assurance tests. Costs for the tests were to be borne

by the Concessionaire, who was to formally notify the HCC no later than five days from the appointment of the third party experts of its intent to subject a particular concession milestone to the tests. The HCC could designate a representative to witness the tests. The Concessionaire was to carry out or cause to be carried out all the tests in line with the instructions of the third party experts and a copy of their results was to be provided to the PMB. If the third party experts were unable to issue the services commencement certificate because the tests could not be held or had to be suspended, the Concessionaire was entitled to reschedule the tests to a reasonably practicable date. If the tests conducted established any defects or deficiencies in the concession milestones, the Concessionaire was to carry out remedial measures and furnish a report to the third party experts who, in turn, were to require the Concessionaire to carry out or cause to be carried out the tests to determine that such remedial measures were enough to bring the concession milestone under review into compliance with the QMUL Malta requirements, the designs and the licences. The HCC representative had the right to, in conjunction with the third party experts, observe, monitor and review the results of the tests to determine compliance of the concession milestone with the design and the redevelopment requirements. If it was reasonably anticipated or determined by the third party experts during the course of any test that the performance of the works did not meet the design and the redevelopment requirements, it could suspend or delay such test and require the Concessionaire to remedy and rectify shortcomings. The third party experts were to provide to the Concessionaire and the HCC representative copies of all test data on completion of each test. Furthermore, the experts could require the Concessionaire to carry out or cause to be carried out additional tests to determine the compliance of the milestones and works in this respect to the SCA's requirements.

3.1.63 The Agreement also catered for the eventuality of delays during construction. In this respect, if the Concessionaire did not achieve any of the concession milestones or the third party expert reasonably determined that the progress on the works signified that the concession milestone was unlikely to be achieved by the applicable scheduled service commencement date, the third party expert would notify the Concessionaire, who was to inform the PMB, within 15 days, about the steps it proposed to take to expedite progress and the period within which it would achieve the milestone. If the concession milestone was not attained by the scheduled service commencement date, the Government was to issue a rectification notice to the Concessionaire to remedy the breach within a stipulated time period.

3.1.64 The SCA further elaborated on the potential suspension of unsafe construction works. In this respect, the PMB could require the whole or part of the works to be suspended on recommendation of the third party experts if such work threatened the safety of any person on the respective site. In this case, the Concessionaire would suspend the works as specified by the PMB and carry out remedial measures to secure the safety of the suspended works. The Concessionaire could require third party experts to inspect such remedial measures and report to the PMB recommending the revocation of the suspension or otherwise. The PMB was to either revoke the suspension or require the Concessionaire to carry out further

remedial measures until the suspension was revoked. All reasonable costs incurred for maintaining and protecting the works or part thereof during the suspension period were to be borne by the Concessionaire. However, if the suspension was caused by Government breaching the SCA, such costs would be due by the Government. If the suspension was due to a force majeure event, it would be up to independent experts appointed from time to time by mutual consent of the Government and the Concessionaire and who possessed technical and/or financial expertise to determine any extension of the scheduled services commencement dates to which the Concessionaire was reasonably entitled, and the HCC was to be notified accordingly. Thereafter the service commencement dates would be extended in line with independent experts' recommendations.

Government's right of access to the sites and assets

3.1.65 The SCA also featured provisions in relation to Government's right of access to the sites and assets. Throughout the works to be carried out by the Concessionaire on the sites in accordance with the SCA's requirements and until the completion date, the HCC or its appointed experts had the right to request access to the sites to monitor such works. Such requests were not to be unreasonably withheld. Following the completion date, the Government was to be entitled to access the sites to:

- a perform any of its obligations under the SCA;
- b verify and investigate a perceived breach in terms of this Agreement;
- c carry out an annual walk through the sites, 30 days from the issuance of the annual report, attended by representatives of the Concessionaire and the Government to ascertain the good maintenance of the sites and the assets in line with the SCA; and
- d perform any statutory obligation.

3.1.66 While the first three reasons required prior notification to the Government of seven days, Government's right to access the sites to perform any statutory obligation was not subject to prior notice. Furthermore, when accessing the sites, Government was to use reasonable endeavours to minimise any disruption to the works or the healthcare and ancillary services. The cost of the Government inspection was to be paid for by the Government. The Concessionaire was bound to give Government access to the sites and reasonable assistance at no charge as and when required by the Government.

Technology watch

3.1.67 Throughout the concession period, the Concessionaire was to implement a technology watch at its own expense so that the concession would benefit from technical advancement and/

or technology upgrades in connection with the sites and assets. The Concessionaire was to present the findings of the technology watch to the MMB in a written report for review at least once every 12 months. The MFH informed the NAO that the technology watch function was intended to commence after the completion date. This Office noted that this understanding by the MFH was not expressed in the SCA.

Replacement of end-of-life equipment

3.1.68 The SCA further included provisions regarding the replacement of end-of-life equipment. The Concessionaire was not to use assets and equipment on the sites for longer than their serviceable life in accordance with good industry practice. In this respect, the Concessionaire was to provide a yearly report to the MMB listing the key medical equipment, that is, equipment valued at or more than €2,000,000, that would reach the end of their serviceable life in the subsequent 24 months. The Concessionaire was also to propose to the MMB an investment plan that included details of the proposed replacement equipment to be purchased by the Concessionaire, which equipment was not to be of an inferior quality to that which it was replacing. When making its proposal for the investment plan, the Concessionaire was to consider the findings of the technology watch. The MMB was to notify the HMC of its decision in respect of the proposed investment plan within five days from its submission. The HMC had the right to object to aspects of the investment plan proposed by the Concessionaire if it appeared that some or all the investment proposals resulted in replacement equipment that was inferior to the original or which went against good industry practice. Such an objection would be notified to the Concessionaire within 15 days from the date of notification to it of the decision. It was further noted that as from the 26th year of the concession period, implementation of the proposed investment plan was to require the HMC's prior approval. Moreover, if at the start of the 28th year, the Government informed the Concessionaire that it would not be exercising its option to revert the title to the KGRH and the GGH from the Concessionaire to the Government, the Concessionaire's proposed investment plan would no longer require the prior approval of the HMC.

Insurance

3.1.69 Provisions in relation to insurance that the Concessionaire was to take out at its own cost and expense were included in the SCA. These included additional insurances as could be required by the applicable law and as the Concessionaire could reasonably consider necessary or prudent in accordance with good industry practice. Copies of insurance policy certificates or cover notes, copies of insurance policies and evidence that the insurance premiums were paid were to be provided to the Government within 30 days of their receipt. No insurance could be cancelled, modified or allowed to expire or lapse until the expiration of at least 30 days' notice was provided by the Concessionaire to the Government. Furthermore, the Concessionaire was to, within seven days from a request to this effect by the Government, provide the Government with copies of all insurance policies and with evidence that they were in full force and effect and that their premiums had been paid. Renewal certificates

were to be forwarded to the Government not later than 20 days following the renewal date. The supply to the Government of any insurance draft policy or insurance certificate or cover note or other evidence of compliance was not to imply acceptance by the Government that the extent of insurance cover was sufficient and compliant with the insurance provisions in the SCA or that its terms were satisfactory or, in respect of any risks not insured against, an acceptance by the Government that those risks were uninsurable. Failure to report any shortfall or discrepancy or uninsured cover within 14 days from the submission date was to be deemed acceptable to the Government.

3.1.70 If the Concessionaire failed to purchase and keep in force all the required insurances, the Government was to have the option to keep them in force itself, pay premiums and invoice the Concessionaire. If the Concessionaire failed to pay the Government within 30 days from the invoice notification, the Government would be entitled to call on the performance guarantee or the new performance guarantee, up to the amount of the insurance indebtedness.

3.1.71 If any of the insurances became unavailable or could not be economically obtained by the Concessionaire, the Government could acquire them itself. In this case, the Government was to notify the Concessionaire within 30 days from acquisition and provide it with copies of all the insurance policies taken out and evidence of the premium payment. The Concessionaire would be obligated to reimburse it. Should any insurances in relation to the sites and the buildings thereon become unavailable or could not be economically obtained by the Concessionaire, the Government could either procure such insurance or provide an indemnity.

3.1.72 The SCA stipulated the following requirements with respect to the insurance policies, which were to:

- a name the Government and any other party having an insurable interest in the insurance policies as joint-insured with the Concessionaire;
- b name VGH Assets Ltd as having an insurable interest;
- c contain a provision waiving the insurer's subrogation rights against the Government and any of its staff except in the case of their respective gross negligence and/or wilful misconduct;
- d be maintained with reputable insurers licensed to or authorised to write insurance business in EU or European Economic Area countries and who are acceptable to the Government, which acceptance was not to be unreasonably withheld or delayed;
- e contain a provision in the then standard format for 'Indemnity to Principals' or equivalent insofar as they relate to the insured risks;

- f insofar as the Government and its staff leased to the Concessionaire in terms of the LSA were joint-insured, contain a non-vitiation provision providing that the insurances shall not be voided or invalidated as against Government and the staff by anything done or not done by the Concessionaire or any other insured party except in the case that they have committed, condoned or collaborated to such action legally to the validity of the policy;
- g contain a provision that each insurance policy insuring the rights and interests of more than one party operated, save for limits of liability and/or amount, in the same manner as if it were a separate policy with and covering each insured and was without right of contribution from any other insurance which was carried by an insured;
- h insofar as they related to damage to the sites and the assets, cover the same for the reinstatement value at each policy renewal date plus 10 per cent;
- i include employers' liability with a limit to be mutually agreed by the parties for claims arising from a single event or series of related events in a single calendar year;
- j include clinical negligence, where the provision or non-provision of any part of the healthcare services could result in a clinical negligence claim with a limit to be mutually agreed by the parties;
- k include public liability with a limit to be mutually agreed by the parties; and
- l include professional negligence with a limit to be mutually agreed by the parties.

3.1.73 It was noted in the SCA that the Concessionaire was not to bring any claim or action against the Government in respect of any loss or damage in circumstances where the Concessionaire would recover such loss or damage under the insurance policies, bar for losses, damages or injury resulting from gross negligence or wilful misconduct of the Government, Government employees leased to the Concessionaire in terms of the LSA, and Government subcontractors. The Concessionaire was to notify the Government within seven days of any claim in excess of €500,000 being made on any of the insurances taken out accompanied by full details of the incident giving rise to the claim. The Concessionaire was to, on request by the Government, submit to the Government an annual claims report.

3.1.74 The SCA also included specific provisions with respect to uninsurable risks. If a risk usually covered became uninsurable then the Concessionaire was to notify the Government immediately on becoming aware of this and:

- a if the Concessionaire and the Government agreed, or it was determined through dispute resolution that the risk was uninsurable;
- b that the situation was not caused by the actions of the Concessionaire or its staff; and

- c the Concessionaire demonstrated to the Government that it and a prudent board of directors of a company operating the same or substantially similar business in Malta to the concession operated by it would in similar circumstances be acting reasonably and in the best interests of the company if they resolved to cease to operate such businesses as a result of that risk becoming uninsurable, taking into account the likelihood of the uninsurable risk occurring, the financial consequences for such company if such uninsurable risk did occur (or had occurred) and other mitigants against such consequences which could be available to such company,

the parties were to meet to discuss the means by which the risk should be managed. In this case, the procedure stipulated in paragraph 3.1.71 of this report was to apply.

3.1.75 The SCA also included provisions in relation to disclosure. Each party was to ensure that the following matters were disclosed to the insurers issuing any of the insurances, provided that the Government was obligated only to notify the Concessionaire, the Concessionaire was to notify the insurers and was only to be obligated to disclose such information to the Government if it was relevant to any of the insurances maintained by the Government, or of which it had the benefit, and which insurances were notified by the Government to the Concessionaire:

- a all information which such party, acting in accordance with good industry practice and with the utmost good faith, reasonably considered to be material to the relevant insurance and/or acting in line with the advice of its insurance advisers believed that the relevant insurers required, including details of any material change in the methods or procedures used in the performance of the healthcare and ancillary services; and
- b all information material to the relevant insurances, which such insurers specifically requested to be disclosed.

3.1.76 Furthermore, the SCA noted that each party was to put in place appropriate internal reporting procedures to satisfy these obligations. On request by a party, the other party would supply the party making the request with copies of any information supplied to the insurers.

3.1.77 Where a party was aware of any information that it would not reasonably expect to be known by the other party but, should it be known, the party possessing the information would expect the other to disclose it to the insurers, that party was to promptly on becoming aware of the relevant information provide the other with the relevant details. Furthermore, each party was to notify the insurers of any material changes in its methods and procedures of working to the extent that it was reasonably likely to adversely affect the insurances and procure that the insurers provide an acknowledgement of such notice and on request supply the other party with a copy of the notice and that acknowledgement. It was further noted that where any survey was conducted by any insurer pursuant to the insurances, the Concessionaire was to request the insurer to supply copies of the results to the Government.

3.1.78 Other requirements listed in the SCA in relation to insurance were that on the termination of the SCA, the Concessionaire could procure that any ongoing liability it had or could have in negligence to the Government and/or any end user arising out of an end user's care and treatment under the SCA would continue to be the subject of appropriate insurance for a period required in terms of applicable law. It was further noted that each party was to take all reasonable steps to minimise and mitigate any losses or other matters for which one party was entitled to be indemnified by or to bring a claim against the other under the SCA.

Access, audit and accounts

3.1.79 The SCA further included provisions in relation to the Concessionaire's annual audited financial statements. These were to be submitted by the Concessionaire to the Government. Although the VGH's annual audited financial statements were eventually submitted, up to February 2018 the VGH had not provided the Government with any audited financial statements.

3.1.80 On the Government's request, the Concessionaire was also to furnish records relating to the services being provided in terms of the SCA and the HSDA. The Concessionaire was not to provide medical tourism records or any corporate documentation relating to its business bar documentation with respect to meetings and resolutions of any and all operational bodies established in terms of the SCA. It was further noted that the information acquired by the Government in this respect was confidential; however, the Government's employees leased to VGH Management Ltd in terms of the LSA and other staff were duty bound to disclose to the Government any breach by the Concessionaire of the SCA's provisions. Following queries raised by the NAO, the MFH indicated that the Concessionaire had the relevant procedures in place to ensure that all personnel were able to raise any concerns in relation to their employment and/or the services provided by the Concessionaire. The MFH also confirmed that the Government was not informed of any such breaches during the period under review.

3.1.81 The employees were also to divulge to the Government and/or any other competent authority the commission or attempted commission of:

- a offences under the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta);
- b offences under legislation creating offences in respect of fraudulent acts or acts of corruption;
- c offences under the applicable law in respect of fraudulent acts in relation to the SCA or other agreements with the Government;
- d defrauding or attempting or conspiring to do so; and

- e other breaches of the law by the Concessionaire, its staff or the EPC contractor (Shapoorji Pallonji or a substitute appointed by the Concessionaire in accordance with the SCA) and the designer (Heery International Inc or a substitute appointed by the Concessionaire in accordance with the SCA).

Human resources management

3.1.82 Provisions in the SCA were also included in relation to human resources (HR) management. It was noted that concurrently with the SCA, the Government and the Concessionaire were entering into the LSA, whereby Government leased its employees to the Concessionaire against a consideration. The LSA and/or similar successive instruments were to be in place throughout the entire concession period. The Concessionaire also agreed to comply and respect regulations concerning the conditions of employment in Malta in respect of additional staff.

Force majeure

3.1.83 The SCA also provided for circumstances that could arise in case of a force majeure event. The Agreement stipulated the procedure applicable after such an event, where the parties were to use all reasonable endeavours to prevent and mitigate the effects of any interruption of the services to be provided under the HSDA. Furthermore, the Concessionaire was to, at all times during which a force majeure event subsisted, take all steps in line with good practice to overcome or minimise the consequences of the force majeure.

3.1.84 Furthermore, in case of a force majeure event, the affected party was to be relieved from its obligations under the Agreement. Meanwhile, the other party was not entitled to claim a breach of obligations under the Transaction Agreements or incur any liability to the affected party for any damages incurred by that other party if the affected party was prevented from carrying out its obligations because of the force majeure event. If the affected party was the Government, for it to be relieved of its obligation to pay the charges pursuant to the HSDA, it was to notify the Concessionaire of the relief sought in respect of the charges. After this notification, the parties would be relieved from their obligations in terms of the Transaction Agreements.

3.1.85 The SCA also provided for relief to be obtained on the grounds of other force majeure events not specified in the SCA. In such a case, the affected party was to, as soon as practicable but within seven days following its awareness that the force majeure event had caused or was likely to cause breach of an obligation under the Transaction Agreements, notify the other party of its claim for relief from its obligations and demonstrate to the other party that it, and its contractors, could not have avoided such occurrence or consequences without incurring material cost, the force majeure event directly caused the need for the relief claimed, such relief could not be expected to be mitigated by it, and that it was using all reasonable

endeavours to prevent and mitigate the consequences of the force majeure event on its obligations. If the affected party complied with such procedure to obtain relief, then it would be excused from the performance of its obligations under the Transaction Agreements to the extent it was affected in such performance by the force majeure event. If the information required for relief to be obtained on the grounds of such a force majeure event was provided late, then the affected party was not to be entitled to any relief during the period for which the information was delayed.

3.1.86 It was further noted in the Agreement that the affected party was to notify the other party as soon as practicable after the force majeure event ended or no longer caused it to be unable to comply with its obligations under the SCA. Thereafter, the Transaction Agreements were to continue to be performed.

Change in law

3.1.87 The SCA defined changes in law to occur when, subsequent to the effective date of the Agreement, any of the following events, giving rise to a material effect on the ability of any one of the parties to exercise, observe and perform any of its material rights and obligations under and in accordance with the provisions of the Transaction Agreements, occurred:

- a the enactment of a new applicable law;
- b the repeal, modification or re-enactment of any existing applicable law;
- c the imposition by any regulatory authority of any material condition in connection with the issuance, renewal or modification, or the revocation or non-renewal (other than in accordance with the existing applicable law) of any licence; and
- d a change in the legality, validity, binding nature and effect or enforceability of the Transaction Agreements.

3.1.88 Such changes in law excluded the following:

- a any environmental law impacting the Concessionaire negatively up to a maximum of €500,000 cumulative every five years from the first event;
- b any labour law relating to cost of living adjustments;
- c any taxation laws relating to direct tax; or
- d any European Community Law.

3.1.89 If a change in law occurred or was about to, then the Concessionaire could, within 30 days starting from the date it was aware (or should have been aware) of the change in law, notify the Government of such change. The SCA included a provision in this respect stating that on such notification, the Concessionaire was to be automatically relieved from its obligations arising out of the Transaction Agreements and that the Government agreed to the charges payable to the Concessionaire pursuant to the HSDA were to continue being paid by the Government.

3.1.90 If the change in law giving rise to a material adverse effect occurred and/or was not remediable by monetary compensation, the Concessionaire could indicate in the notification to the Government its intention to terminate the Transaction Agreements, pursuant to the discretionary termination clause outlined in the Agreement (reference is made to the ensuing Termination and termination payments section in this chapter of the report). It was provided that on the request of the Government to rectify the material adverse effect arising out of the change in law, which rectification was to at least restore the Concessionaire in its position prior to the change in law, the Concessionaire and the Government were to agree to a time period not exceeding 90 days within which the Government could rectify the material adverse effect. If on the lapse of this period, the material adverse effect subsisted, the Transaction Agreements were to automatically terminate pursuant to the discretionary termination clause. It was further noted that in any such event, suspension of payment of the charges payable by the Government to the Concessionaire pursuant to the HSDA at any point in time by the Government would lead to an automatic early termination of the Transaction Agreements pursuant to the discretionary termination clause.

3.1.91 If, on the other hand, the Concessionaire deemed the material adverse effect arising from the change in law curable by monetary compensation, the Concessionaire could claim for compensation from the Government in the notification of the change in law submitted to the Government. If the Government disputed payment of the compensation, the parties were to resort to dispute resolution. If during such period, the Government defaulted on the payment of the charges to be paid in terms of the HSDA, which subsisted for 45 days following the expiry of the relevant 30-day credit period, this would lead to an automatic event of default by the Government that was not rectifiable. Termination clauses relating to the Government event of default were to apply in this respect.

3.1.92 It was further noted in the SCA that if a change in law gave rise to the Concessionaire benefiting from a material financial gain, the parties agreed that the Concessionaire was to remain in a similar financial position as prior to the change in law coming in effect. Such gains were to be deducted from the charges to be paid by the Government pursuant to the HSDA.

Government step-ins

3.1.93 The SCA included provisions in relation to different kinds of Government step-ins, depending on the event causing the default.

- 3.1.94 In the event the Concessionaire remained in default or breach of a rectifiable event of default at the end of any rectification period, then the Government would step in to rectify the default or breach within a reasonable timeframe. The Government could also apply the penalties referred to in paragraph 3.1.14 of this report. The rectification cost would be increased by 10 per cent as a penalty and the total amount was to be considered as a debt by the Concessionaire to the Government. The Government was entitled to call on the performance guarantee or the new performance guarantee, as could be applicable, up to the amount of any indebtedness of the Concessionaire to the Government. If the Government failed to rectify the default or breach within a reasonable timeframe the matter was to be discussed between the parties.
- 3.1.95 Government control step-in procedures, where the Government would take control of the sites and the services provided in terms of the SCA and HSDA, were to apply if the Government reasonably considered that it required doing so because of:
- a a force majeure event;
 - b a national emergency; and/or
 - c a non-rectifiable event of default committed by the Concessionaire.
- 3.1.96 In the first two cases, the Concessionaire was to be allowed to continue providing the services provided in terms of the SCA and the HSDA under the control and direction of the Government throughout the entire duration of the event resulting in the Government stepping in.
- 3.1.97 The Government was to notify the Concessionaire in writing of its wishes to take control, and include the action it intended to take, the reason for this action, the date of commencement of any action, and to the extent practicable, the effect of the action on the Concessionaire and its obligations under this Agreement. Immediately on a declaration of a state of national emergency, the Government was entitled to step in without the need of any further action from any of the parties, the Concessionaire was to be relieved of its obligations under the SCA and was to operate the sites and assets under the Government's direction.
- 3.1.98 During the Government control step-in:
- a the Concessionaire was to give all reasonable assistance to the Government to facilitate such step-in;
 - b the Government would bear any additional costs incurred by the Concessionaire as a result of the step-in; and
 - c the Government was to honour the charges due to the Concessionaire for the healthcare services provided by the Concessionaire in line with the HSDA.

3.1.99 Furthermore, following the Government control step-in taken as a result of a non-rectifiable event of default committed by the Concessionaire, the Government was to be entitled to terminate the Transaction Agreements by serving a termination notice, specifying a termination date, to the Concessionaire. The termination date was to be after the lapse of 15 days from the date of service of the termination notice. The Government was to then call on the performance guarantee or the new performance guarantee, as could be applicable, up to the Concessionaire's financial indebtedness towards the Government.

3.1.100 On the occurrence of a Government control step-in, the Concessionaire was to appoint the Government as its attorney with full power and authority to exercise all or any of the Concessionaire's rights arising from the contracts currently in force regarding Government's operation of the sites and subcontracts to the EPC Contractor and/or the designer. Such power of attorney was to be immediately revocable on the Government control step-out.

3.1.101 If its motives for stepping in ceased to exist, the Government could exercise its rights to step out no less than 48 hours from the date on which the motives for the step in ceased to exist or the date on which the Parties mutually agreed in writing for Government to step out. The Government was to provide the Concessionaire with notice of the step-out in advance as reasonably practicable. On stepping out, the sites and assets were to be returned to the Concessionaire in line with the standards agreed in accordance with the Transaction Agreements.

Concessionaire event of default

3.1.102 Events of non-observance by the Concessionaire of any of its obligations contained in any provision of this Agreement were to be considered rectifiable events of default, unless they were the following and were therefore to be deemed unrectifiable:

- a the Concessionaire fraudulently and/or wilfully carried out any licensable or regulated activity without being duly licensed in terms of the applicable law; or the Concessionaire breached or was otherwise fraudulently and/or wilfully in breach of the terms, conditions or provisions of the licences, subject to the terms of the SCA;
- b the Concessionaire abandoned the concession and/or the business activities and operations connected therewith without the prior written consent of the Government;
- c the occurrence of any event where the Concessionaire was, or was deemed, in accordance with the applicable law to be unable to pay its debts as they fell due or to be insolvent or where the Concessionaire admitted an inability to pay its debts as they fell due;
- d the Concessionaire entered into an arrangement with creditors or a resolution was passed by the Concessionaire's shareholders for its voluntary winding up;

- e the Concessionaire's directors or creditors request the appointment of a liquidator, a receiver, a provisional administrator or other person having similar capacity or purpose; and
- f any petition for the winding up of the Concessionaire was admitted by a court of competent jurisdiction or the Concessionaire was ordered to be wound up by a court of competent jurisdiction, except for any amalgamation or reconstruction consented to by the Government at its sole and absolute discretion, provided that as part of any such amalgamation or reconstruction, the property, assets and undertakings of the Concessionaire were transferred to the amalgamated or reconstructed entity and this entity unconditionally assumed the obligations of the Concessionaire under this Agreement and provided further that:
 - i the amalgamated or reconstructed entity had the legal and technical capability and operating experience necessary for the performance of all the obligations under this Agreement; and
 - ii the amalgamated or reconstructed entity had the financial standing to perform all the obligations under this Agreement and had a credit worthiness at least as good as that of the Concessionaire as at the commencement date.

3.1.103 If the default event was deemed rectifiable, the Government was to serve a rectification notice on the Concessionaire specifying:

- a the type and nature of the default event that had occurred, giving sufficient detail to the Concessionaire to enable it to properly redress it; and
- b instructions to the Concessionaire to put forward a rectification programme that was acceptable to the Government outlining the steps to be taken by the Concessionaire to rectify, within a period of between 60 and 90 days from the notification, or within a mutually agreed timeframe, the event of default committed by the Concessionaire.

3.1.104 If the Concessionaire rectified the rectifiable default event committed in terms of the notice or successfully implemented the rectification programme submitted to and accepted by the Government, the rectification notice was to be deemed to be superseded. However, if the Concessionaire failed to rectify the default event committed within the term of the rectification notice or approved rectification programme, Government rectification step-in procedures were to apply. This Office was informed by the MFH that no non-rectifiable Concessionaire events of default were declared.

Termination and termination payments

3.1.105 Also outlined in the SCA were the measures that were to be followed in case of the termination of the Agreement and applicable termination payments. Besides automatic termination following the lapse of the concession period and mutual agreement by the parties to the SCA to terminate, there were various other circumstances necessitating termination of the Agreement.

3.1.106 The Government could choose to terminate the Agreement by giving 120 days' notice to the Concessionaire at any point in time during the concession period, subject to a termination payment. If the Agreement was terminated in this manner, the Government would assume the Concessionaire's obligations relating to any assumed contracts and subcontracts relative to the sites or part thereof that were the subject of termination. Furthermore, from the date of the termination notice, the Concessionaire would no longer indemnify the Government and its staff from and against any liability in relation to any assumed contracts and subcontracts relative to the sites or part thereof.

3.1.107 Another reason for the termination of the Agreement was due to a change in the law giving rise to a material adverse effect suffered by the Concessionaire. This circumstance was to lead to an automatic early termination. It was understood that such a termination would be deemed to constitute discretionary termination by the Government. For this reason, the provisions included in the previous paragraph, with due alteration where required, were to apply in this scenario as well.

3.1.108 Another case considered as discretionary termination on the part of the Government was in the case of termination due to a default event committed by the Government. Any of the following events would constitute a non-rectifiable event of default by the Government, the existence of which automatically relieved the Concessionaire from its obligations pursuant to the SCA:

- a a default of timely payment of the charges due in terms of the HSDA by the Government to the Concessionaire as they fall due, with the default subsisting continuously for 45 days following the expiry of the relevant 30-day credit period and regular notices of delay in payment having been sent by the Concessionaire in writing every 15 days. Interest in terms of the Commercial Code (Chapter 13 of the Laws of Malta), was to accrue from the date of default to the date of actual payment;
- b a breach by the Government of its obligations under this Agreement in relation to:
 - i supporting the Concessionaire to obtain licences, cost entry visas, employment and residence permits required;
 - ii observing its obligations under the Transaction Agreements;
 - iii not disturbing the Concessionaire or VGH Assets Ltd from the enjoyment of the sites;
 - iv bearing costs in relation to the infrastructure and utilities in Malta;
 - v not interfering in medical tourism issues or the provision of services by the Concessionaire except as outlined within the SCA and the HSDA;
 - vi indemnifying the Concessionaire in respect of any breaches of laws relating to the environment arising from an event prior to the effective date;
 - vii maintaining access to the sites for maintenance, installation, performance of works, servicing or other related activities; and
 - viii permitting the Concessionaire to commence the works on and from the effective date;

which breach would have a material adverse effect on the Concessionaire in the performance of its obligations under the SCA for a continuous period of 90 days following written notification regarding the situation submitted by the Concessionaire to the Government. During the 90-day period the Concessionaire was to be exempt from its obligations relating to the breach. The 90-day period could be extended by a further 90 days or by a mutually agreed period, within which the Concessionaire would be exempt from all its obligations pursuant to the Transaction Agreements. It was further noted that a breach by the Government of its obligation to observe and comply with all its obligations under the Transaction Agreements was to exclude a non-rectifiable event of default committed by the Government in terms of default of timely payment of the charges due pursuant to the HSDA and from expropriation, requisition, confiscation and nationalisation by the Government of all or a material part of the sites or assets other than through Government rights of step-in;

- c a breach by the Government of any of the following obligations following the lapse of 90 days:
 - i securing vacant possession of the sites in accordance with the Emphyteutical Deed;
 - ii not permitting any burden or encumbrance over all or any part of the sites or any rights of the Concessionaire therein or thereon; and
 - iii ensuring the sites remained free from any encroachments, taking immediate steps to remove encroachments; not selling, transferring, alienating or disposing of or encumbering the sites; and not encroaching on land or property adjacent to the sites, save for carrying out general upkeep; and⁶
- d expropriation, requisition, confiscation and nationalisation by the Government of all or a material part of the sites or assets other than an exercise of Government's step-in rights.

3.1.109 It was further noted in the SCA that any of the periods mentioned could be extended by mutual written agreement. Furthermore, if the Government was in breach of any of its obligations pursuant to the Transaction Agreements for a continuous period of 90 days, the Concessionaire was to be exempt from its obligations relating to the Government's breach. If the breach remained in existence thereafter, the Concessionaire was to be exempt from 50 per cent of deductions applicable due to Concessionaire breaches in terms of the HSDA.

3.1.110 When a non-rectifiable event of default was committed by the Government, the Concessionaire could serve a termination notice to the Government, specifying the type and nature of the event of default. Furthermore, the notice was to specify that the Agreement would be terminated on the date specified in the notice, which date was not to be set prior to the 48 hours from the lapse of the notification date. In this event, the Government was to assume the Concessionaire's obligations relating to any assumed contracts and subcontracts relative to the sites or part thereof subject to the termination. Additionally, as from the date

⁶ During the 90-day period, the Concessionaire was to be exempt from all its obligations pursuant to the Transaction Agreements.

of the termination notice, the Concessionaire was not to indemnify Government and its staff from and against any liability arising in relation to any assumed contracts and subcontracts relative to the sites or part thereof.

- 3.1.111** In the case of a default of the Government’s obligations in terms of the SCA considered to be rectifiable, a rectification notice would be served by the Concessionaire to the Government. This notice was to specify the type and nature of the rectifiable event of default which had occurred, providing sufficient detail to enable the Government to properly redress the event in question. It was also to specify that the Agreement would be terminated on the lapse of the respective periods pursuant to the non-rectifiable events of default from the date of notification of the rectification notice, unless the Government rectified the event of default within the stipulated timeframe or put forward and implemented a rectification programme acceptable to the Concessionaire within the said period. It was further noted that if this event was rectified in terms of the rectification notice or the rectification programme was successfully implemented, the rectification notice would be deemed to be superseded and the Agreement would not terminate.
- 3.1.112** In all cases of termination above, the termination payment was to consist of €100,000,000 and the sum of the lender’s debt incurred, that is, the debt owed to the primary lender(s) pursuant to the initial Financing Agreement consented to by the Government by virtue of the Direct Agreement entered into by and between the same parties to the SCA concurrently with such Financing Agreement by not later than the effective date.
- 3.1.113** Another reason for termination contemplated in the SCA was termination due to a non-rectifiable event of default committed by the Concessionaire, which process was described in paragraph 3.1.102 of this report. In respect of such a termination, the Government could choose to assume any and all the Concessionaire’s obligations in relation to any assumed contracts and subcontracts relative to the sites or part thereof that are the subject of termination. Furthermore, if the agreement was terminated because of a non-rectifiable event of default committed by the Concessionaire, the Concessionaire was to indemnify the Government against all and any claims made against it by contractual counterparties to the assumed contracts and subcontracts due to the Government not stepping in and succeed to any or all contractual or other arrangements. In the event of this kind of termination, Government would assume the lenders’ debt in full and extinguish it with or without the benefit of time. When queried by the NAO regarding the Government assuming responsibility for the lender’s debt, the Negotiation Committee confirmed that this clause was a standard inclusion in any project finance initiative. The inclusion of this clause was necessary in any project with limited recourse finance, to facilitate the securing of financing.
- 3.1.114** The SCA also provided for termination due to a force majeure event or a national emergency. It was noted that if no mitigation measures were agreed by the Parties on or before 90 days after the date of commencement of the force majeure event or national emergency

and these events still continued or their consequences render the affected party unable to comply with its obligations under any of the Transaction Agreements for more than 365 days, then the affected party could terminate the SCA by giving 30 days' written notice to the other party. Particularly in the case of a force majeure event, the Government was to have the discretion to assume any and all of the Concessionaire's rights and obligations relating to any assumed contracts and subcontracts relative to the sites or part thereof which were the subject of termination. Furthermore, in the event of termination due to a force majeure event or national emergency, the Concessionaire would not be indemnifying the Government and its staff from and against any liability arising in relation to any assumed contracts and subcontracts relative to the sites or part thereof as from the date of the termination notice. In the event of this kind of termination, the Government would assume the lenders' debt in full and extinguish it with or without the benefit of time and also pay 50 per cent of the equity invested by the Concessionaire in case of any insurance proceeds shortfalls. Equity was defined in the SCA as the sum of the company's paid up share capital, shareholder loans and any and all shareholder advances to the Concessionaire, including any share premium, and its distributable reserves. It was to exclude any unrealised revaluation gains or losses that could have been accounted for. It was noted that if the insurance proceeds were equivalent to the equity and the lender's debt, then the Government had no payment obligations. The Government was to pay the balance of the debt to the lender from the payments due to the Concessionaire.

- 3.1.115 Aside from instances where the SCA could be terminated and the amount of termination payments in this respect, the Agreement also included provisions regulating such payments. It was noted that any compensation paid and settled in full by the Government to the Concessionaire pursuant to the amounts stipulated in the SCA was to be in full and final settlement of any claim the Concessionaire could have in relation to termination. Furthermore, the Concessionaire would be excluded from all other rights and remedies in respect of any such termination. However, this was to be without prejudice to any and all other claims pertaining to the Concessionaire against the Government in respect of amounts due and payable under the Transaction Agreements.
- 3.1.116 It was also noted that any right to terminate the SCA was not to prejudice any claim for damages and/or any other claim in accordance with the applicable law competent to Government where termination was due to a non-rectifiable event of default committed by the Concessionaire. In any other termination event, the Government could not bring forward any claim against the Concessionaire.
- 3.1.117 On termination, the Parties were to implement the hand-back provisions contemplated in the SCA. Furthermore, termination of the SCA would give rise to the termination of the Transaction Agreements.

Hand-back process

- 3.1.118 A number of provisions in the SCA regulated the hand-back process, with respect to the sites and the activities and operations included in the Transaction Agreements, which were to be undertaken on the lapse of the concession period or the termination of the Agreement for any reason.
- 3.1.119 Subject to notification by the Government to the Concessionaire of at least 24 months prior to the lapse of the concession period, the Government was to retain the option to request the reversion of title to the GGH and the KGRH from the Concessionaire for a consideration payable by Government to the Concessionaire equal to €80,000,000. If this notification was provided then the Concessionaire was to, on and from the date of the notice until the lapse of the concession period, require the Government's written consent prior to effecting any changes to the employment conditions of the Government staff that were going to be leased to VGH Management Ltd in terms of the LSA. For the reversion of title to take place the parties were to appear on a public deed. If the title to the GGH and the KGRH was reverted to Government, the Concessionaire was to, at its sole and entire expense:
- a transfer these sites free from encumbrances, 'tale quale' and with no warranty for latent defects in accordance with applicable legislation; and
 - b remove from them any assets that the Government opted not to retain.
- 3.1.120 It was also noted in the SCA that, on termination of the SCA for any reason, the Government was to have the power and the authority to:
- a take back physical possession and control of the sites, subject to the conditions with respect to the reversion of title of the GGH and the KGRH;
 - b take over the activities and operations contemplated to be carried out by the Concessionaire under the Transaction Agreements and ensure their reversion to the full management, operation and control by the Government and carry out all activities and operations, including the provision of all services included in the SCA and HSDA, subject to the necessary licences, authorisations and controls;
 - c demand the return to the Government of all:
 - i personal data, as defined in the Data Protection Act (Chapter 440 of the Laws of Malta), available pursuant to the terms of or while performing the obligations of the SCA;
 - ii sensitive personal data, as defined in the Data Protection Act (Chapter 440 of the Laws of Malta), available pursuant to the terms of or while performing the obligations of the Transaction Agreements;
 - iii other information belonging to the Government that was made known to the Concessionaire for the purposes of the SCA; and

iv copies of such personal data, sensitive personal data and information;

or at the Government's written instruction, destroy all such personal data and sensitive personal data and information, together with any and all copies of it and certify in writing to the Government that it had done so, save to the extent that the Concessionaire was prevented by law from destroying all or part of such data and information. In this case, the Concessionaire was to keep the data and information confidential and not disclose it to any third party or use or process it for any purpose;

- d demand from the Concessionaire and/or its staff or any person claiming through or under the Concessionaire all databases in a clear and legible, non-corrupt and operational format relating to the sites, patients, treatments administered and related information, as well as databases relating to the running and operation of the sites and assets including information relating to the manufacturers, installers and maintenance thereof and all ancillary information collected by the Concessionaire from the effective date until the termination of the SCA, provided that the Concessionaire was not obligated to provide any data, records and information related or ancillary to medical tourism;
- e acquire any of the assets procured by the Concessionaire to be used in the performance of its obligations under the Transaction Agreements, subject to the Concessionaire's right to compensation therefore as could be included in the termination payment. In this case, the assets were to exclude any material or equipment acquired by the Concessionaire before the concession period, and records, whether registered before or during the concession period, pertaining to medical tourism, intellectual property registered in the name or on behalf of the Concessionaire, and leased equipment unless the Government took over the lease agreements and obligations for the lease payments in respect of such leased equipment; and prohibit the Concessionaire, its staff or any person claiming through or under the Concessionaire from using the assets or otherwise dealing with them;
- f without any action by the Concessionaire, step in and succeed to the rights and interests of the Concessionaire under such contracts and/or agreements as the Government could in its sole and absolute discretion deem appropriate with effect from the date of the communication of such decision to the EPC Contractor and/or the designer and contracts relating to IT suppliers, or a contract or a number of contracts to any one contractor relating to clinical services and/or management of services exceeding 20 per cent of the annual minimum charges payable by the Government pursuant to the HSDA for the related sites; and
- g insofar as permissible under the applicable law and at its absolute discretion, cause or procure that the Concessionaire's rights, interests, benefits and obligations deriving from the subcontracts to the EPC Contractor and/or the designer and agreements with third

parties currently in force and binding on the Government regarding the Government's operation of the sites as listed in the SCA, licences or consents and any other contracts concluded in connection with the performance of the healthcare and ancillary services and the operation and maintenance of the sites and assets by written notice to the Concessionaire, be novated in favour of or otherwise transferred to the Government.

- 3.1.121 It was further noted in the SCA that within 90 days after the lapse of the concession period or early termination of the Agreement, the Concessionaire and the Government were to conduct a joint inspection of the sites including the assets. The cost of the hand-back inspection was to be borne by the Concessionaire in the case of a non-rectifiable event of default committed by the Concessionaire, and by the Government in the case of a non-rectifiable event of default committed by the Government, or by the parties equally in any other case. The joint inspection was to be attended by a representative of the Concessionaire and a representative of the Government who were to jointly oversee the compilation of a hand-back inspection report.

Subcontracting and material contracts

- 3.1.122 Also contemplated in the SCA were provisions in relation to subcontracting to the EPC contractor and/or Heery International Inc (or a substitute for this designer), and material contracts. In this respect the Government's prior written approval, which could not be unreasonably withheld, was to be obtained before the engagement or employment of the subcontractors; the termination of such; any changes in their agreed terms of engagement or employment; and the appointment of any proposed substitute in this respect. The Government was not to object to any replacement subcontractor having the required legal capacity, power and authority to carry out this function and the equivalent technical expertise and financial resources to do so as the previous subcontractor(s). Furthermore, an authenticated copy of every subcontract and any material amendment thereof was to be delivered by the Concessionaire to the Government within 30 days of signing or execution.
- 3.1.123 In this respect, also highlighted in the SCA was that the Concessionaire was solely responsible to the Government for its obligations under this Agreement. Government approving of the subcontractors did not relieve the Concessionaire from this responsibility, could not be construed as participation in the subcontractor's selection and did not render it liable for any act or omission of the subcontractor. The Concessionaire was responsible for the management of the subcontractors and for acts, omissions and neglect of subcontractors and their staff. It was also noted in the SCA that all subcontracts were to include the option for their assignment to and/or novation in favour of the Government or its nominee on the lapse of the concession period or earlier termination.
- 3.1.124 The SCA also included criteria in respect of the terms of subcontracts that the Government approved of. Particularly, the Concessionaire was responsible to ensure that the following terms were satisfied:

- a the appointment of the subcontractor did not breach the applicable legislation or likely bring about such a breach;
- b the subcontractor had full legal capacity, satisfactory credit status and know-how to enter and meet the obligations arising out of the SCA;
- c the subcontractor was to assign, transfer or novate, as the case could be, the subcontract in favour of the Government if the Government so requested even prior to its expiry or early termination;
- d the subcontractor was to be contractually bound by the applicable obligations of the Concessionaire under the SCA;
- e the subcontracts were not to contain any terms:
 - i depriving the Government of all or a substantial part of the benefit of any assigned, transferred or novated contract; and
 - ii resulting in the imposition on the Government of obligations more onerous than those imposed on the Concessionaire; and
- f the Concessionaire was able to discharge its obligations under the SCA.

Liability and indemnity

3.1.125 The Agreement also included provisions in relation to the liability of the Concessionaire and the Government and their reciprocal liabilities. Particularly, the SCA noted that the Concessionaire was liable for damages incurred by any third party in relation to the provision of services and the performance of the SCA. The Government was only liable for such damages if these were incurred due to its action or omission or those of its staff, including staff leased to the Concessionaire. Furthermore, the Government and the Concessionaire were obligated to give information (bar records and data in relation to medical tourism) to each other, if any legal proceedings were initiated in relation to, directly or indirectly, the concession or the Transaction Agreements. They were to provide reasonable assistance to one another in the defence of any such demand, claim, action or proceeding if the other so requested.

3.1.126 Furthermore, the Agreement delved into provisions related to indemnities. In this respect, the Government and the Concessionaire agreed that if on the same matter, one of them had already recovered in full (for itself or on behalf of another) sums from the other or under an insurance policy, as applicable, it would waive its rights to make another claim and that indemnities given under the SCA were to be without prejudice or limitation to any other indemnity that could be provided under the same Agreement or to any other remedy contemplated in the applicable legislation.

3.1.127 The Government's obligations in relation to indemnities to be provided by the Concessionaire were also considered. In this respect, the Government was to make all reasonable efforts to mitigate any expense, liability, loss, claim or proceedings in relation to which the Concessionaire was liable to indemnify it pursuant to the SCA. Additionally, the Government was to, as soon as practicable, notify the Concessionaire of any actual or threatened claim in respect of which it could seek to be indemnified by the Concessionaire pursuant to the SCA. Besides, if a claim was being made or threatened against the Government in respect of any indemnity under the SCA, the Government was to have full regard for the requirements of any insurer and allow, where applicable, any insurer to defend, settle or compromise the claim. If an insurer chose to defend, settle or compromise a claim made or threatened against the Government, the Government was to provide the Concessionaire with all relevant information regarding the claim. Where there was no insurer or an insurer did not choose to defend, settle or compromise a claim made or threatened against the Government, if the Government chose to defend, settle or compromise the claim itself, it was to do so with the diligence of a *bonus pater familias* and consult with the Concessionaire. Similarly, if the Concessionaire defended, settled or compromised a claim made or threatened against it, it was to do so with the diligence of a *bonus pater familias* and consult with the Government.

Transparency obligations

3.1.128 The SCA further outlined provisions relating to transparency obligations, including with respect to the Freedom of Information Act. The Government was subject to the requirements of this Act and could be required to disclose information without consulting or obtaining the consent of the Concessionaire. In this respect, the Concessionaire was to (and was to procure that its subcontracted EPC contractor and designer):

- a assist and cooperate with the Government to enable the Government to comply with its obligations under the Freedom of Information Act;
- b transfer to the Government all information requests relating to the concession, the Transaction Agreements and any ancillary aspect to it made under the Freedom of Information Act, that it or the subcontractors received as soon as practicable and not later than five days from receipt;
- c provide the Government with a copy of all the information belonging to the Government requested in the information request that was in its possession or control in the form that the Government required within five days (or such other period as Government could reasonably specify) of the Government's request for such information; and
- d not respond directly to an information request under the Freedom of Information Act unless authorised in writing to do so by the Government.

- 3.1.129 The Government was to take reasonable steps to notify the Concessionaire of an information request made under the Freedom of Information Act to the extent that it was permissible and reasonably practical for it to do so, but it was the Government that was responsible to determine whether any information was exempt from disclosure in accordance with the Freedom of Information Act.
- 3.1.130 Furthermore, the Government retained absolute discretion whether to disclose any information to the House of Representatives and any of its parliamentary committees, the AG, the Accountant General, the Parliamentary Ombudsman and any other public body. Consultation with or the consent of the Concessionaire was not required in this respect. The Concessionaire, the EPC contractor and the designer subcontracted by the Concessionaire were to provide the Government with copies of all information belonging to it which was to be such disclosed and which were in their possession in the form it required within five days (or such other period Government reasonably specified) of the Government's request. Furthermore, the Concessionaire and the EPC contractor and the designer subcontracted by the Concessionaire, were not to engage directly with any of the entities mentioned in relation to the concession, the Transaction Agreements and any ancillary aspect thereto, unless written authorisation by the Government had been obtained.
- 3.1.131 The SCA also noted that if a Parliamentary Question was submitted, the Concessionaire was to adhere to the generally restricted timeframes imposed on the Government to produce the information required including relevant documentation and documentary proof.

Dispute resolution

- 3.1.132 The SCA provided dispute resolution procedures that were to be adhered to. The Concessionaire and the Government were to try to negotiate in good faith to find a resolution within 20 days from the date of receipt of a formal written notification of the dispute. If the dispute was resolved, the Concessionaire and the Government were to prepare and sign a written memorandum that was to be supplied to the parties. Such memorandum was to confirm that the resolution was in full and final settlement of the dispute, and record all matters in issue, all material factual details of the dispute and the precise terms of the resolution.
- 3.1.133 Additionally, the SCA included provisions relating to alternative dispute resolution should a dispute not be resolved amicably. In this case, the dispute was to be referred to settlement under the International Chamber of Commerce (ICC) Mediation Rules. If it was not settled within 45 days following the filing of a mediation request or within another period as agreed to in writing by the parties, such dispute was to be settled under the ICC's Rules of Arbitration. The arbitration was to take place in Malta with three arbitrators.

3.1.134 If arbitration proceedings occurred during the concession period, the Agreement would remain in full force pending award. An award delivered pursuant to arbitration proceedings would be final and binding on the parties. The SCA further stipulated that an award imputing a payment by the Concessionaire to the Government was to be enforced through the collection of the said amount by the Government as a debt chargeable to the performance guarantee or the new performance guarantee as applicable, after deducting any amounts held by any law court.

Parent company guarantee

3.1.135 The Concessionaire was to obtain and provide a parent company guarantee, the form of which was set out in the SCA, by the effective date of this Agreement. The parent company guarantee, which was to remain valid for 90 days following the lapse of the concession period or early termination thereof, was to guarantee the performance of the Concessionaire's obligations under the Agreement and indemnify the Government if the Concessionaire did not perform as agreed.

Other requirements

3.1.136 The SCA also included provisions on the order of precedence of the different Transaction Agreements in case of conflicts, or discrepancies. It also specified guidelines on establishing the priority of different clauses in the SCA in case of ambiguities or discrepancies within it.

3.1.137 It further included provisions in relation to disclosure of information. It was noted that the Government had granted the Concessionaire access to information pertaining to the concession and the obligations it was required to assume prior to the commencement date and that the latter had carried out any due diligence it required and that it was satisfied with the sites, activities and operations of the GGH and the KGRH and with risks relative thereto. Furthermore, other than for fraudulent, wilful misconduct or gross negligence, the Government, its staff, advisers or public bodies could not be held liable by the Concessionaire for any errors in the information furnished to it, insufficient information or any misunderstanding of the information made available. The Concessionaire was not relieved from risks or obligations in terms of the SCA on any such ground.

3.1.138 The SCA also included several provisions in relation to changes in the Agreement that could be carried out with the written consent of the parties. However, no changes affecting the nature or general scope of the Agreement could be carried out. Changes proposed, be they by the Government or the Concessionaire could not go against applicable legislation. Furthermore, the Government could not substantively change the works to be undertaken by the Concessionaire on the sites. Each party was to bear the consequences of their proposed changes unless agreed otherwise.

- 3.1.139 Furthermore, the SCA included provisions regulating the safety and adequacy of goods, equipment, consumables and materials. Save for items mentioned in the SCA, the Concessionaire could not install, keep or use in or on the sites materials, equipment or apparatus that caused or could cause material damage to them or the generation, accumulation or migration of any hazardous substance unlawfully. Provisions regarding such hazardous substances were also included, particularly in relation to their usage, storage and handling.
- 3.1.140 The SCA further included provisions on intellectual property rights. Such rights owned by the parties prior to the effective date of the Agreement were to vest in each party unless stated otherwise. Entry into the Transaction Agreements did not constitute a transfer, licence or assignment of any such rights. All intellectual property rights arising from the concession from the effective date were to remain vested in the Concessionaire, bar for the database relating to information pertaining to the end users, which was to be owned by the Government and remain freely accessible to it during the concession period. On termination of the Transaction Agreements, it was to be remitted to the Government in a legible, clear and incorrupt format and only Government was to have a copy of it. On the lapse of the SCA or the earlier termination thereof for whatever reason, the Government had the option to lease the intellectual property rights vested in the Concessionaire at an equitable market price to be agreed by the parties. The SCA further discussed the infringement of third-party intellectual property rights. Any liabilities, costs, expenses, damages and losses arising from infringement of third-party intellectual property rights resulting from their use or from the use of materials by the Concessionaire during the concession period were to be borne by the Concessionaire, provided that the Concessionaire defended any claims for infringement of third party intellectual property rights made by any such third party against the Government arising in respect of the Concessionaire's use of the intellectual property during the concession period, provided it was the Concessionaire's decision to use it and that in the event of an unsuccessful defence, the Concessionaire indemnified against all liabilities, costs, expenses, damages and losses arising and incurred by the Government.
- 3.1.141 Furthermore, the SCA also included provisions in relation to third party licences for software, specifically allowing the Concessionaire to obtain any licences from third parties to fulfil its obligations under the Transaction Agreements if the Government was entitled to a novation of such licences or had the right to obtain a licence of such software at commercial rates and under the same terms as the third party licences were granted to the Concessionaire. If the Concessionaire was unable to ensure that the Government would have the benefit of all such third party licences, unless Government consented thereto in writing, the Concessionaire was to indemnify the Government against any costs incurred due to such non-availability and procure suitable alternatives to the third party licences at its own cost.
- 3.1.142 Furthermore, the SCA provided restrictions on the assignment of rights by the Concessionaire and the Government under the Transaction Agreements. The Concessionaire required the Government's written consent to transfer, assign or dispose of any rights, and obligations under the Transaction Agreements. This restriction was without prejudice to the SCA

provisions regarding Government control step-in rights and change of control. Moreover, the Government was entitled to transfer its rights and obligations under the SCA to any third party having sufficient legal capacity and credit status, either alone or with others, to enter into and meet the SCA's obligations with the prior written consent of the Concessionaire and the primary lenders.

3.1.143 It was further noted that the Government accepted the primary lenders as creditors of the Concessionaire and that any future lenders of the Concessionaire or its assignees were to be approved in writing by the Government prior to their lending funds to the Concessionaire.

3.1.144 The Agreement further outlined the governing law and jurisdiction applicable to it, the waiver of sovereign immunity, and amendments, waivers and consents in relation to the provisions of the Agreement. Confidentiality considerations were also addressed, indicating the circumstances and to whom information could be disclosed.

3.2 Health Services Delivery Agreement

3.2.1 The Government, represented by the Minister for Energy and Health, and VGH Management Ltd,⁷ represented by Ram Tumuluri, entered into the HSDA on 30 November 2015 and were bound by the Agreement as from this date. 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.

3.2.2 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. This was subject to potential earlier termination in accordance with the relevant clauses of the HSDA and/or the Emphyteutical Deed, the SCA, the LSA and any amendments and/or addenda thereto.

General provisions regarding the services to be provided by VGH Management Ltd

3.2.3 The HSDA regulated the services to be provided by VGH Management Ltd and included general and specific clauses regarding their provision. VGH Management Ltd was to provide the healthcare/clinical and ancillary non-clinical services and meet or exceed the service levels and requirements set out in the Agreement. The services were to be provided in accordance with best industry practice and applicable legislation. VGH Management Ltd was to obtain, maintain and comply with all permissions, consents, approvals, certificates, permits, licences, agreements and authorisations necessary for it to provide the services at its sole expense and responsibility. Furthermore, VGH Management Ltd was to be responsible for and bear all costs incurred in the implementation, maintenance and development of the services offered. It was to allocate sufficient resources to provide the services and to provide reasonable

⁷ Reference to Vitals Global Healthcare Management throughout the agreement included its permitted and lawful successors and assigns.

cooperation and information regarding the services to Government's other suppliers as the Government could reasonably require to enable them to provide the necessary supplies.

3.2.4 The Agreement also stipulated that the services provided to end users, that is, individuals entitled to receive them at no cost, pursuant to the terms and conditions of the HSDA, were to be given priority over any services that VGH Management Ltd could provide to other parties. Furthermore, VGH Management Ltd was to ensure that it was fully able to adhere to the Agreement's terms and conditions before providing any services to third parties.

3.2.5 Following the issuing of the relative services commencement certificate on the achievement of a concession milestone (paragraph 3.1.13 refers), VGH Management Ltd was to:

- a carry out quarterly customer satisfaction surveys; and
- b ensure that the healthcare/clinical and ancillary non-clinical services provided met or exceeded the levels to which the services were to be provided and the Government's requirements set out in the Agreement.

3.2.6 The HSDA further stipulated that until the issuance of the services commencement certificate, VGH Management Ltd was to be bound by the service levels in place at the GGH and the KGRH as at the effective date.

3.2.7 The Agreement also stipulated that VGH Management Ltd was required to, in the provision of the following ancillary services at all sites, ensure best industry practice:

- a cleaning;
- b estate management;
- c linen;
- d pest control;
- e security;
- f help desk and desk reception;
- g waste management; and
- h parking for patients and visitors, which could be charged at commercial rates.

Healthcare services to be provided at the Gozo General Hospital

- 3.2.8 VGH Management Ltd was to provide 125 acute and 175 long-term care beds, which included beds for rehabilitating patients at the GGH. For the first year after the completion date of this hospital, provision was to be made for a 10 per cent upward variation in the services to be provided and the additional services were to be included in the minimum health service delivery fee. This variation was not applicable to the number of beds being offered. Every three years from the second year of the completion date, the services were to increase by five per cent without any further incremental cost to the Government. In clarifications sought by the NAO, the MFH explained that this provision applied to operating theatre time excluding endoscopy.
- 3.2.9 Activities, care and investigations to be covered by VGH Management Ltd at the GGH were as follows (those not covered by a quantifier were to be covered irrespective of volume whereas activities referred elsewhere such as at the MDH and not captured in the GGH budget were to be billed for over and above):
- a medical services, including primary diagnostics and follow-up care, specifically imaging services, laboratory services, coagulation, urinalysis and microscopy, blood transfusion, microbiology, cardiorespiratory and others such as ear, nose and throat (ENT) investigations and post-mortems;
 - b basic pharmaceuticals and medical supplies consumption, with anticipated consumption for 2015 expected to be €1,800,000. Anything over and above this sum was to be billed for separately;
 - c all inpatient care, including clinicians, nursing and nursing support staff and allied health;
 - d all inpatient access to consultations with the specialty visiting doctors from the United States of America (USA) and the United Kingdom (UK) when necessary;
 - e patient meals in line with guidelines issued by regulatory authorities, and staff meals according to current entitlement provisions;
 - f all emergency care, including emergency room, hyperbaric and ground ambulatory services;
 - g primary care services – activity at peripheral health clinics in Gozo were not to be included in the price – in 2014, there were 78,729 patient episodes;
 - h day care services – in 2014, there were 874 oncology/rheumatology-related patient episodes and 2,286 day care cases;

- i outpatient services – in 2014, there were 44,330 outpatients; and
- j 3,000 hours of surgery annually for surgeries as performed in the current GGH set-up, excluding endoscopy procedures. Government was to be billed separately for any additional surgical time.

3.2.10 In partnership with the local health economy, VGH Management Ltd was to deliver the following outcomes:

- a financial, design, management and clinical leadership to develop a new paradigm for the delivery of care to significantly contribute to Gozo's socioeconomic growth; and
- b refinement, enhancement and expansion of clinical services in Gozo, based on the following guiding principles:
 - i development of a state-of-the-art medical facility and international standards for medical services;
 - ii serving as a health tourism destination for patients from Europe, Africa and other international destinations;
 - iii provision of additional inpatient, rehabilitation and long-term care capacity, with appropriate separation of acute care and long-term care services;
 - iv creation of a learning platform for medical education through a relationship with Barts and the London School of Medicine and Dentistry; and
 - v enhancement of communications and development of care pathways based on best practices for healthcare across the entire spectrum of healthcare delivery.

3.2.11 These outcomes were to be achieved through the modernisation of the existing hospital, the provision of additional inpatient capacity, the expansion of healthcare in Gozo, increased employment through the enlargement of the campus and the development of an educational hub to fulfil the agreement between the Government and Barts and the London School of Medicine and Dentistry.

3.2.12 The HSDA delved into detail on the specific services to be provided at the GGH. By 2017, the capacity of the GGH for local needs was to be increased to 125 acute beds, 25 day care beds and 200 long-term beds which were to include rehabilitation. The NAO noted a discrepancy in terms of the number of beds cited with respect to the GGH in different clauses of the HSDA. While the required services by 2017 stipulated a total of 350 beds (125 acute, 25 day care and 200 long-term), the minimum beds service and guarantee indicated a total of 300 beds (125

acute and 175 geriatric) (paragraph 3.2.8 refers). An Addendum to the HSDA (reported in further detail in section 5.1) increased the minimum beds service and guarantee by another 50 beds, resulting in a total of 350 beds, which was equivalent to the required services by 2017. However, this Office noted differences in the classification of the additional 50 beds (25 acute and 25 geriatric as opposed to 25 day care and 25 long-term). Although outside of audit scope, the MFH informed the NAO that this discrepancy was eventually addressed with Steward Healthcare towards the end of 2018.

3.2.13 Furthermore, VGH Management Ltd was expected to maintain, as a minimum, the full array of services provided at the GGH within the financial package agreed with the MFH. It was also noted that as the hospital and additional services were developed and further expertise was offered, it would be possible to cover services that at the time were rendered to Gozitan patients at more specialised public hospitals in Malta and that additional services that currently required overseas treatment could be made available to Maltese and Gozitan patients. These services would be covered by negotiated financial packages outside the basic minimum agreed package.

3.2.14 Several deliverables were included in the Agreement, namely:

- a practices, operations and protocols to be in line with EU standards and the review of UK standards and best practices for consideration and in line with any locally applicable guidelines that could be developed by regulatory authorities in the future;
- b expansion of the hospital workforce in parallel with the proposed expansion of services;
- c supplementation of locally available specialties through visiting specialty doctors from the USA and the UK;
- d consolidation of acute beds within a single location to provide a dedicated set-up and focus on the patients' needs;
- e dedicated and standalone set-up for long-term geriatric care, which would be in a separate building, away from the acute hospital building;
- f state-of-the-art emergency department;
- g an adequate mix of general and specialty-dedicated state-of-the-art operating theatres;
- h specific wards by department providing privacy, dignity and single sex accommodation, with no room having more than four beds; and
- i 15 to 20 outpatient consultation rooms to be housed in the existing GGH building to be refurbished to support the required outpatient activity.

- 3.2.15 Guiding principles for clinical care delivery and guidelines for the transfer and discharge of patients from care, pastoral, spiritual and cultural care of service users and relatives, TV and Wi-Fi, and compliance with regulatory requirements were all specified in the HSDA. Furthermore, quotas to be included in the minimum charge to be paid by Government to VGH Management Ltd for service levels at the GGH were stipulated in the Key Inclusions Document. Following queries submitted to the MFH, the NAO was informed that the Key Inclusions Document was not available since the completion date had not been reached. The KPIs applicable to the GGH were noted as being specified in the KPI Document. The NAO noted that the KPIs relevant to the GGH were stipulated in a schedule of the HSDA. Human resources, facility and site development, equipment and ICT infrastructure were to be included in separate documents. According to the MFH, these documents were to be established following the completion date of the project.
- 3.2.16 Also noted in the HSDA was that medicinal usage was to be reimbursed at the cheapest of either the price established by VGH Management Ltd or the price paid for the same product by the Central Procurement and Supplies Unit.
- 3.2.17 VGH Management Ltd was to increase the existing services at the GGH and new services and capacity were to be offered in relation to comprehensive acute care. Bed occupancy was projected to be at least 80 per cent. The HSDA noted that the services to be provided were:
- a acute services, consisting of:
 - i several types of surgery;
 - ii obstetrics and gynaecology;
 - iii anaesthesia and pain management;
 - iv several fields of medicine;
 - v oncology, including palliative services;
 - vi paediatrics, including paediatric intensive care and child psychiatry;
 - vii acute psychiatry (adult)
 - viii day care;
 - ix intensive treatment unit (ITU)/high-dependency unit;
 - x pre-hospital and Accident and Emergency Department;
 - xi primary care;
 - xii dentistry, including dental laboratory;
 - xiii outpatients services;
 - xiv psychology; and
 - xv anticoagulation services;

 - b long-term care and rehabilitation, consisting of:
 - i rehabilitation services, including all allied health and discharge liaison services;
 - ii long-term geriatric care; and
 - iii long-stay psychiatry; and

- c technical services, consisting of:
 - i imaging;
 - ii laboratory;
 - iii pharmacy;
 - iv nutrition/dietetics/health promotion;
 - v blood bank;
 - vi mortuary services; and
 - vii general surgery.

Surgery

3.2.18 The HSDA included an analysis of the different departments within the GGH and the outcomes expected with respect to each. Aside from the requirement to provide 3,000 hours of surgery annually, excluding endoscopy procedures, VGH Management Ltd was required to develop well-designed surgery suite facilities with state-of-the-art equipment to be able to perform minor and major surgeries. Surgical suite facilities were to be expanded to accommodate all local elective and emergency surgical requirements. Furthermore, specialty-dedicated theatres for obstetrics, orthopaedics, endoscopy and other specialties were to be catered for. Other requirements pertaining to the facilities and surgical practice were included, involving operating theatre protocols and procedures, resourcing, data systems, the quality of equipment, medical devices and instrumentation used, standards of surgical practice and operational standards, improved patient outcomes and access to pre-operative services. VGH Management Ltd undertook to sustain the full spectrum and quality of the current throughput of surgical services, also included within the Agreement.

Anaesthesia and pain management

3.2.19 VGH Management Ltd was to develop a full service anaesthesia department with in-house coverage at all times. Outcomes in this respect included the evaluation of all patients prior to surgery, the provision of adequate recovery, post-anaesthetic care facilities, staffing levels and outpatient facilities for pain management and the strengthening of pain management services.

Orthopaedic department

3.2.20 The outcomes expected with regard to the Orthopaedic Department were the optimisation of the patients' quality of life, the building of a new orthopaedic surgery suite, 10 dedicated beds in an orthopaedic ward setting, the availability of day beds for minor orthopaedic surgeries, dedicated outpatient facilities, state-of-the-art prostheses, medical devices, equipment and surgical instruments, and the maintenance – as a minimum – of the current range of orthopaedic operations and investigations at the GGH. A full-service imaging department was to be equipped with advanced digital imaging technology, including computerised tomography and magnetic resonance imaging (MRI).

Ear, nose and throat department

3.2.21 In respect of the ENT Department, the HSDA stipulated that the then range and quality of services were to remain available. Furthermore, adequate outpatient facilities for ENT and audiology-related visits were to be ensured. VGH Management Ltd also had to ensure that in the absence of resident ENT specialists, an adequate emergency referral protocol was established with other public hospitals/providers to facilitate the transfer and treatment of urgent/emergency cases.

Ophthalmology

3.2.22 Regarding ophthalmology, VGH Management Ltd was required to ensure that the then current service levels were maintained and that adequate outpatient facilities for ophthalmology-related visits were provided.

Urology

3.2.23 In respect of urological services, VGH Management Ltd undertook to offer a variety of treatments, surgical and non-surgical, to treat a full range of urological diseases and conditions and ensure the availability of expert evaluation and treatment using the latest technologies and therapies with multidisciplinary collaboration of physicians.

Obstetrics and gynaecology

3.2.24 In respect of obstetrics and gynaecology at the GGH, VGH Management Ltd was to provide accessible, equitable, safe and high-quality maternity services that meet the needs of the local population. Further outcomes contemplated in the HSDA were reduced rates of medical/surgical interventions in births, a reduced number of women and babies presenting with complications following childbirth, the development of patient care pathways aimed at improving patient experience and contributing to the reduction of perinatal mortality and infant mortality rates, access to maternity services based on clinical need and individual choice, and cooperation with perinatal health screening programmes. VGH Management Ltd further undertook to dedicate a 12-bed ward for obstetrics and gynaecology and a specialised obstetric surgery theatre and three obstetric delivery rooms with new and improved medical equipment. Well-trained staff were to be made available for local needs. Services provided were to range from wellness checks to advanced treatment options.

Oncology and haematology

3.2.25 VGH Management Ltd was also to deliver the latest medical oncology and haematology care. Specialised care was to be delivered by a multidisciplinary team, consisting of physicians certified in medical oncology and haematology, and registered nurses certified in oncology nursing. Requirements for the care of patients were also specified in the Agreement.

Respiratory medicine

3.2.26 The Department of Respiratory Medicine was to offer the highest quality of care for patients with respiratory disease and was to contribute towards the improvement of respiratory healthcare. Diagnoses to be seen were specified in the contract. Furthermore, the Department was to offer a wide range of specified inpatient and outpatient services. A new respiratory ward was to be situated in the new wing of the hospital and was to be equipped with the latest medical and diagnostic equipment.

Neurology

3.2.27 VGH Management Ltd also undertook to set up a Neurology Department at the GGH, which was to include a team of specialists with subspecialty expertise in each of the domains of adult neurology. This set-up was to provide care to patients with diseases relating to the nervous system in hospital and outpatient settings. Key areas to be treated at the new Neurology Department were specified.

Immunology

3.2.28 Regarding the Immunology Department, VGH Management Ltd was to provide clinical and laboratory services. The Department was to provide a wide-ranging service for the investigation, diagnosis and treatment of conditions resulting from the dysfunction of the immune system. Furthermore, clinically, there were to be two main areas of specialisation: allergy and primary immunodeficiency.

Rheumatology

3.2.29 Outpatient facilities and access to rheumatology specialists were to be made available with respect to rheumatology.

Cardiology

3.2.30 VGH Management Ltd also undertook to set up a comprehensive cardiology service to improve access to cardiology services for locals, waiting times and outcomes. This service was to include certified and trained specialists to provide a wider range of services than what was currently available at the GGH. VGH Management Ltd was to make available a minimum of five dedicated cardiology beds in the cardiology wing that were not included in the quota for the acute general beds. Furthermore, VGH Management Ltd undertook to make available for local needs a state-of-the-art Heart Centre for medical tourism purposes. This would serve to provide local patients with comprehensive cardiac care, ranging from basic facilities in preventive cardiology to the most sophisticated curative technology, in line with best practice and eliminating the need for the transfer of these patients elsewhere to receive specialist services. Specific services to be provided were included in the HSDA. It was also noted that

VGH Management Ltd was to ensure that local cardiovascular patients were assisted in a timely fashion through the most appropriate form of diagnostic testing focused on maximum convenience and conducted in one central location. Customised care plans were to be tailored to individual needs. VGH Management Ltd was to provide dedicated expertise and clinical leadership in the cardiology field and ensure that specialists collaborated to ensure seamless care throughout the patient experience, from diagnosis to treatment and follow up. This would ensure that patients had a positive experience of care. VGH Management Ltd was also to make available for local use all diagnostic services at the GGH Heart Centre with such services specified in the HSDA. A team-based approach was to ensure that the best available surgical and non-surgical vascular and heart disease treatments were chosen and delivered in specialised procedure rooms.

Gastroenterology and endoscopy

3.2.31 Regarding gastroenterology and endoscopy, VGH Management Ltd undertook to provide new and upgraded facilities and medical equipment to address various gastroenterology-related ailments, to eliminate referrals to the MDH and handle as many cases as possible at the GGH. Specialists were to be recruited, while dedicated surgery rooms to accommodate endoscopy procedures were to be provided. The Gastroenterology Department was to provide comprehensive care for patients with upper and lower gastro-intestinal, hepatobiliary and pancreatic disorders, and was to consist of consultant gastroenterologists and associate specialists, as well as inflammatory bowel disease specialist nurses, upper and lower gastrointestinal nurse endoscopists, as well as clinical nurse specialists. VGH Management Ltd agreed to maintain, as a minimum, the then current throughput levels in endoscopy for local patients, which in 2014 stood at 1,250 procedures. Several specialist services were highlighted in this respect.

Dermatology

3.2.32 VGH Management Ltd was to ensure that dermatology services at the GGH were to be upgraded and that services in relation to sexually transmitted diseases and sexual health were provided. VGH Management Ltd undertook to maintain, as a minimum, the then current dermatology outpatient consultations throughput, which in 2014 stood at 1,042 consultations.

Nephrology and endocrinology

3.2.33 Furthermore, VGH Management Ltd was required to upgrade under-represented services, such as nephrology and endocrinology, especially in relation to chronic diseases and adult diabetes.

Trauma and emergency centre

3.2.34 Provisions were also included regarding a trauma and emergency centre. This unit was to be responsible for all urgent/emergency and trauma cases at all times. The centre was always to have access to all urgent imaging, blood investigations, operating theatre suites, ITU, specialty wards and senior physicians to facilitate optimal care. Furthermore, resuscitation room facilities were to be appropriately represented, equipped and staffed and, where appropriate, cases were to be triaged directly to specialist areas. The centre was to be appropriately staffed at all times, with sufficient built-in flexibility to handle significant population fluctuations. The unit was to be able to liaise and work seamlessly with non-hospital ambulance and rescue services and other stakeholders and a high level of communication technology was to be available in this respect. Emergency ambulance calls were to be handled by trained emergency department personnel capable of high clinical-level decision making and liaison with the pre-hospital teams and other rescue bodies. Technology was to be made available to allow the remote monitoring of the patient and to facilitate assistance and advice to paramedic teams from medics and appropriate staff at the centre from an embedded unit. Furthermore, the unit was to be responsible to maintain a high level of practice from all its staff by regular assessment and training exercises and to achieve and maintain accreditation as a level 1 emergency and trauma centre, while following internationally recognised protocols and guidelines for patient management. Provisions in respect of areas to be made available within the unit were also included.

3.2.35 Outcomes for the centre were also provided. The centre was to provide high quality, timely, safe and effective care reaching optimum clinical outcomes for patients in the centre and assessment units. The primary objective was the attainment of a safe and efficient throughput time of four hours for all patients between the point of patient registration and time of patient discharge into the community or admission to the ward. Provisions were also stipulated with regard to a triage system that was to be applied according to the Emergency Severity Index score, with time limits imposed on the service provided according to this score. It was noted that the admission rate was not to exceed 33.33 per cent of Accident and Emergency attendees.

Ambulatory services

3.2.36 The HSDA included provisions in respect of ambulatory services that were to be offered in Gozo, namely, ground ambulance services, patient transport services, and air transport services.

3.2.37 Ground ambulances were to be designed and equipped to support trained paramedics providing patient care on the scene of an emergency and during transport to hospital. It was noted that technology was to be made available to allow remote monitoring of the patient and to facilitate assistance and advice to the paramedic teams. Provisions were also included in respect of the skills and training required to staff the ambulances. VGH Management Ltd

was required to recognise the level of care needed with the appropriate dispatching of the correct crew and transport level to avoid misuse of advanced services and to avoid instances where basic crews and ambulances were sent to serious/life threatening call-outs. It also undertook to shorten the time from call to initiation of appropriate emergency treatment to improve patient survival and recovery rates. Additionally, VGH Management Ltd was required to apply resuscitation and life saving measures appropriately on site with remote assistance from the emergency and trauma centre bases and to avoid bringing deceased patients into the emergency and trauma unit.

3.2.38 VGH Management Ltd was also required to continue providing the current patient transport service within Gozo and Malta for the Gozitan population and improve/expand this service to accommodate new operating time slots. Furthermore, all hospital vehicles were to be of the required standard, and all staff were to be provided with appropriate training.

3.2.39 Air transport service was also to be made available for the transportation of patients. VGH Management Ltd was required to provide a helicopter emergency medical service with appropriately trained licensed crew, nurses and paramedics to take care of the patient, provide ongoing pre-hospital care and inter-hospital care. In most cases, an emergency physician trained in pre-hospital treatment or an anaesthetist would also be required. Furthermore, VGH Management Ltd was required to facilitate such a service and provide approved landing and maintenance facilities and staff.

Emergency preparedness and major incidents

3.2.40 Regarding emergency preparedness and major incidents, VGH Management Ltd was required to identify and have in place a responsible emergency officer, and to have and maintain an incident response plan. Furthermore, it was also required to have in place evacuation plans to relocate service users to alternative secure premises in the event of any significant incident or emergency, maintaining public safety and confidence throughout. VGH Management Ltd was to assist in the development of and participation in joint planning and training exercises with other key stakeholders within the Malta National Disaster Plan, or any similar plans at national level. It was also to be in line with requirements of any national preparedness plan, have in place and maintain staff who were suitably trained and competent in emergency preparedness, resilience and response and have in place and maintain adequate incident coordination facilities from where a significant incident or emergency could be effectively managed.

Intensive care unit

3.2.41 The contract further included provisions in respect of the Intensive Care Unit (ICU), which was to facilitate the optimal monitoring and treatment of critically ill and unstable patients, some of whom could need life support, or who could need life support unless monitored closely with

immediate treatment response, for patients who need ventilator/respiratory support, such as patients after complex major surgery, and for patients who may need to receive treatment that could render them critically ill or unstable. Local ICU patients were to have access to state-of-the-art invasive and non-invasive monitoring facilities together with all necessary investigations and imaging. Further guidelines on the Unit, such as which treatments could be accessed, the checking and servicing of equipment, emergency expansion of the facility during a mass disaster and staffing were also included. The ICU had to be geographically located and equipped to facilitate quick and safe access to and from other supporting units and facilities. A step-down/outreach service for the support of patients discharged to the general wards and the staff caring for them was to be provided by the ITU staff to facilitate early recognition of patients requiring critical care treatment/transfer, and the avoidance of unnecessary admissions to the unit. The outcomes of the Unit included in the HSDA related to the level of the facilities and equipment and the training of staff. Furthermore, VGH Management Ltd had to achieve the following measurable outcomes:

- a the application of admission criteria to reduce/avoid inappropriate admissions to the ICU;
- b reduction of the length of stay at the ICU;
- c reduction of mortality at the ICU;
- d reduction of complications associated with the management of the ICU;
- e optimisation of pain and sedation management; and
- f optimisation of ventilator/respiratory support management.

Hyperbaric unit

3.2.42 This Agreement also included provisions with respect to the upgrading of the hyperbaric unit through the addition of a multi-chamber to facilitate use by more than one patient and improve patient cooperation in a less claustrophobic environment.

Paediatric ward

3.2.43 VGH Management Ltd undertook to set up a new paediatric ward covering all common paediatric problems with improved facilities. This ward was to have a dedicated 12-bed unit with a playroom. Several provisions in the Agreement related to making children's hospital stays as comforting as possible. Furthermore, the new paediatric ward was to include a one-to-two-bed child psychiatry facility for mental health patients less than 18 years of age. This facility was to be integrated or separated from the rest of the ward as required. Staffing issues and surgical procedures and inter-hospital cooperation and protocols were also considered, as well as the configuration of the ward set-up, inspection and reporting obligations.

Acute psychiatry facility

3.2.44 Through the HSDA, VGH Management Ltd also undertook to set up a new acute psychiatry facility with 20 beds that was to be an integral part of the acute hospital setting. The facility's set-up was to ensure the ongoing protection of the safety, privacy and dignity of patients. Furthermore, ongoing on-site specialist care was to be provided, together with access to specialists in subspecialties of psychiatry. This ward was to provide a secure environment for the rapid assessment, intensive observation and treatment of patients with acute psychiatric needs. It was also noted that discharge planning was to include referrals to outpatient programmes available at the GGH.

3.2.45 The aims and objectives of the service were to be:

- a identifying mental health problems as early as possible;
- b ensuring equity of access for all, including the most disadvantaged users;
- c building care and support around outcomes that matter to the individual patient in improving quality of life;
- d offering patients age and developmentally appropriate information, and a choice of high-quality evidence-based and/or best practice interventions, including psychological therapies;
- e ensuring that patients with severe mental health problems receive high quality care and treatment in the least restrictive environment possible;
- f working with the whole family for assessment and support services;
- g developing patient-focused pathways and services, meeting patient's needs, working jointly with other services to deliver the right interventions in a timely manner;
- h working collaboratively with referrers and their teams, social care, community groups and other providers to address patients' mental health needs proactively and promptly, to maximise opportunities for recovery and minimise the likelihood of escalation and crisis; and
- i establishing effective working relationships, developing age-appropriate pathways and ensuring smooth interfaces with other areas of the Maltese health care services, while retaining ownership for the wellbeing of the patient and implementation of the recovery plan.

Outpatients department

3.2.46 Also noted in the HSDA was that VGH Management Ltd was to provide appropriate psychiatric outpatient facilities and space for other workers to facilitate joint working. VGH Management Ltd was also to deliver a proactive service to prevent the premature death of people with mental illness, including health education initiatives. Procedures regarding documentation were also highlighted in the Agreements. Furthermore, protocols and procedures about certain incidents and events were to be made available to regulatory authorities.

3.2.47 Further cited in the HSDA were several outcomes that VGH Management Ltd was to provide with respect to the outpatients' department. VGH Management Ltd undertook to develop a dedicated entrance to all outpatients' areas. More than 20 outpatient wards/clinics were to be set up. Also stipulated in the Agreement was that the specific number of wards/clinics to be established was to be between 20 and 30. The outpatient centre was to include a primary care centre, a childcare centre, two outpatient surgery theatres, outpatient rehabilitation services, a Health Non-Governmental Organisation (NGO) Resources and Coordination Centre, a Regional Health Information and Audit Centre and an outpatient pharmacy. Outpatient wards were to have easy access to imaging, lab services and pharmacy to facilitate various requirements. Together with the acute ward specialists, the outpatient department was to be staffed with dedicated medical professionals including full-time doctors, nurses and nursing aides.

3.2.48 The HSDA also delved into requirements for the dentistry outpatient department. VGH Management Ltd was to provide an upgraded outpatient dental department with the capacity to meet demand and enable efficient turnover. Furthermore, VGH Management Ltd undertook to provide access to operating theatre time for dental surgeries requiring full anaesthesia/back-up, upgraded dental imaging facilities, continuous emergency cover, and the establishment of care transfer protocols in cases where the GGH did not have sufficient expertise. The rules and legislation the department was to be subject to were listed in the Agreement.

Imaging department

3.2.49 VGH Management Ltd was also required to invest in modern medical imaging technology for the Imaging Department. This Department was to provide a full range of imaging and therapeutic services, as listed in the Agreement, to the hospital and the local community. Continuous on-site specialist cover was to be provided. Furthermore, efforts were to be made to minimise waiting times.

Medical laboratory and pathology department

3.2.50 With respect to the Medical Laboratory and Pathology Department at the GGH, the HSDA stipulated that the hospital's laboratory services were to be based at the GGH campus and

were to support all clinical services. A wide variety of routine and esoteric tests were to be provided efficiently. The Department was to provide high clinical laboratory standards through adopting well-accepted quality assurance activities. The Department's Laboratory Quality Committee, consisting of members from all disciplines in the Department, was to meet regularly, solve problems and ensure a high standard of laboratory service. The objective was for clients to be confident that generated test results and reports were accurate, reliable, clinically relevant and reported in a timely manner.

Primary care

3.2.51 The Agreement also looked at the provision of primary care in Gozo. VGH Management Ltd undertook to provide a revamped continuous primary care service on the GGH precincts, increasing efficiency through providing a gatekeeper function for hospital services. This Agreement stipulated that local peripheral clinics were not covered, and remained under the responsibility of the Government. Furthermore, VGH Management Ltd undertook to:

- a develop clinical patient pathways for managing the most common chronic diseases;
- b provide high-quality primary care treatment;
- c focus on disease prevention;
- d ensure quality and productivity of the service, including avoiding emergency admissions to hospital;
- e understand and meet patients' needs and involving them in decision making about their treatment and care;
- f involve other professionals in the care of patients when this is in the patients' best interests;
- g ensure that all members of the team have the right skills and training to perform their duty effectively;
- h ensure compliance with the minimum time a general practitioner was to spend with each patient at each appointment – a minimum of 30 minutes for new cases and 20 minutes for follow-up cases; and
- i provide access to national screening programme-related services for all screening procedures.

Long-term care and rehabilitation

- 3.2.52** The Agreement further included requirements in relation to long-term care and rehabilitation at the GGH. VGH Management Ltd undertook to include long-term geriatric care and a rehabilitation centre with a total capacity of 200 beds in the new GGH. This centre was to have an area of around 18,000 square metres, and include three core areas, namely, the geriatric wards, the rehabilitation unit and wellness centre and the long-term psychiatry ward.
- 3.2.53** The facility for long-term geriatric care was to be occupied by existing advanced age patients and patients in the long-stay psychiatric ward. The long-term care area was to have 175 beds for local use. Other conditions in relation to this facility, such as the maximum number of beds in a room, design, type of patients it was to cater for and the care team were also included in the HSDA. VGH Management Ltd was to ensure access to certified geriatricians on site as well as to appropriately trained nurses with geriatric-specific training to offer a comprehensive range of geriatric services.
- 3.2.54** The rehabilitation care ward involved the development of a rehabilitation centre with a capacity of 25 rehabilitation beds for local use. The aim of this facility was to provide post-operation rehabilitation for acute procedures requiring between two weeks and one month of recovery time.
- 3.2.55** There was also to be a dedicated long-term psychiatric ward with 25 beds as part of the long-term care wards within the facility and patients discharged from the acute psychiatric ward were to be admitted at a half way home before integration into community living. With regard to the rehabilitation centre, this was to focus on elderly care, post-surgery care and wellness and preventive care. State-of-the-art facilities for physical rehabilitation assessment, therapy and research were to be provided. Facilities and technology to be included within the rehabilitation centre were stipulated in the HSDA.

Blood bank

- 3.2.56** VGH Management Ltd further undertook to provide the GGH patients with safe blood products in line with established practice. Blood products availability was to be safeguarded and a mutual agreement between the Government and the VGH about volume of blood and blood products was to be reached by 2018, or before the start of operations. Protocols and procedures were to be in place to ensure that blood and blood products fulfilled the requirements of the regulatory authorities.

Mortuary services

- 3.2.57** Through the HSDA, VGH Management Ltd also undertook to maintain the then current mortuary service levels and upgrade the hospital mortuary as per established best practice.

Ancillary services to be provided at the Gozo General Hospital

3.2.58 The Government's requirements for ancillary non-clinical services from VGH Management Ltd at the GGH were:

- a the management of a minimum of three ground ambulances under an ambulance shed;
- b the operation of at least one air ambulance;
- c the construction of a new helipad;
- d the upgrading of the existing pharmacy;
- e a new Regional Primary Care Hub (Health Centre) to be built and run in any of the GGH's buildings bar the site on which the medical school was to be built;
- f a Regional Health Information and Audit Centre to be built and run in any of the GGH's buildings bar the site on which the medical school was to be built;
- g the expansion of the current hospital mortuary;
- h the building of an anatomy centre;
- i 30 overnight rooms and a common room/kitchenette as on-call accommodation to be built and run in any of the GGH's buildings bar the site on which the medical school was to be built;
- j a childcare centre to be built and run in any of the GGH's buildings bar the site on which the medical school was to be built;
- k a Health NGO Resource and Coordination Centre to be built and run in any of the GGH's buildings bar the site on which the medical school was to be built; and
- l a staff cafeteria and recreational area to be built and run in any of the GGH's buildings bar the site on which the medical school was to be built.

Healthcare services to be provided at the Karin Grech Rehabilitation Hospital and the St Luke's Hospital

3.2.59 The Government's service requirements with respect to the KGRH and the SLH were:

- a 320 inpatient beds for geriatric care to be distributed as per Figure 5, which service was also to include a medical outpatient and a day hospital catering for the needs of the elderly on an outpatient basis;

Figure 5 | Distribution of geriatrics inpatient beds

Wards required	Nature of ward	Care provided	Number of beds
4	Assessment	Early geriatric care to integrate semi-acute geriatric patients back into the community by speeding up their transfer from MDH and from the community	120
5	Medical geriatric	Medical care and non-intensive rehabilitation for elderly patients	150
2	Geriatric rehabilitation	Medical care for elderly patients who can sustain an amount of physical exercise	50

- b 80 rehabilitation beds for patients requiring intensive rehabilitation, to be divided into three wards as follows: stroke and neurology patients, musculoskeletal/trauma cases and amputees and other surgical patients. General allied health outpatient services, such as physiotherapy, occupational therapy, speech and language pathology, and an OPU catering for inpatients, outpatients and the needs of other entities were also to be included;
- c a dermatology department, including an inpatient unit having 12 beds and an outpatient department; and
- d a Chinese medicine and holistic centre, having a reception/waiting area of over 50 square metres, an area of over 25 square metres for two acupuncture treatment rooms, an area of over 35 square metres for one rehabilitation therapy room; and an enclosed area for privacy.

Geriatrics

3.2.60 Geriatric inpatients were expected to have the following services:

- a assessment, documentation and a geriatric therapy programme;
- b daily medical review;
- c continuous nursing care;
- d daily physiotherapy and occupational therapy;
- e clinical pharmacy input;
- f social worker input per ward;
- g dietetics/nutritionist input;

- h a speech-language pathologist service in certain pathologies;
- i other allied health professional services according to needs; and
- j access to other specialities, as required, through consultations with the MDH specialists.

3.2.61 After an assessment period of a maximum of two weeks, the patient was to be moved into the geriatric rehabilitation wards in line with potential and exercise tolerance. At these wards, the patient was to receive a six-day therapy service with the aim of timely discharge back in the community. Allied health input was to include management in a nearby physiotherapy area on an individual basis. All patients were to have other services, for example, home visits. Furthermore, all patients were expected to have a transport service and appropriate catering service.

3.2.62 All geriatric outpatients were expected to have the following services:

- a transport services to and from visits;
- b full assessment, including medical input with an individual treatment programme;
- c allied health visits in line with the care programme;
- d monitoring of programme and progress during follow-up visits; and
- e necessary community support.

Rehabilitation

3.2.63 Regarding the rehabilitation of patients, there were to be an inpatient department, an outpatient department and an OPU housed at the SLH or the KGRH.

3.2.64 Inpatients were to be assessed by a rehabilitation team, consisting of a rehabilitation consultant, a nurse, allied health professionals, a clinical pharmacist and others, within 24 hours of admission to set up a rehabilitation plan. In the rehabilitation ward, a daily schedule with daily medical reviews and management was to be provided to patients, and morning and evening sessions were to be delivered to maximise patients' recovery. Furthermore, VGH Management Ltd was to provide internal and external recreation facilities as part of the rehabilitation programme. Such facilities were outlined in the HSDA. Additionally, a rehabilitation flatlet was to be used as a service for home trials prior to discharge.

3.2.65 Outpatients were to be provided with the following services by VGH Management Ltd:

- a in-house transport and portering;

- b regular visits by medical staff;
- c use of necessary equipment according to needs;
- d acceptable waiting time for appointments (less than three weeks) and particular individual visits;
- e specialised team of therapists dealing with major pathologies;
- f holistic allied health services to be included during patient visits, including traditional Chinese medicine;
- g appropriate ancillary services according to requirement, for example, the regular testing of pool water; and
- h wheelchair and seating assessment unit for those requiring this service.

3.2.66 The HSDA also provided for an OPU to provide service to inpatients and outpatients. This was to be a national service that aided other government entities. The standard care expected to be provided by this Unit was stipulated in the HSDA. It was further noted that a review of the performance and quality indicators was to take place every year following completion of the infrastructural works.

Other requirements and services

3.2.67 Also included in the HSDA were common guiding principles for clinical care delivery and guidelines in relation to transfers and discharge from care. Although the HSDA referred to the EU Standards for Rehabilitation Care, the Dermatology Medical Brief and the Traditional Chinese Medical Brief as attachments to the Agreement, requests for these documents submitted by the NAO to the MFH proved to no avail, with the Ministry stating that it was not in possession of these attachments. Furthermore, it was noted in the Agreement that VGH Management Ltd was to provide laboratory and imaging tests at the SLH and the KGRH. Tests not provided at these sites were to be supported by the MDH. Additionally, VGH Management Ltd was to provide a pharmacy for the hospital. The Agreement further included guidelines in relation to meals, patient transport service, pastoral, spiritual and cultural care, TV and Wi-Fi, mortuary services, staff training and facilities, adherence to regulatory requirements and emergency preparedness and major incidents.

3.2.68 Provisions relating to an adult mixed gender inpatient accommodation for 12 adult dermatology patients were also included in the HSDA. Overall, operational service principles, basic design requirements and a description of the accommodation and building and engineering services to be included with respect to the dermatology centre were stipulated.

3.2.69 Provisions were also included in the HSDA in relation to a Chinese Medicine Clinic at the SLH. The scope of service, HR, working hours and equipment required were outlined.

Ancillary services to be provided at the Karin Grech Rehabilitation Hospital and the St Luke's Hospital

3.2.70 The Government's requirements for ancillary non-clinical services from VGH Management Ltd at the KGRH and the SLH were:

- a a childcare centre for staff;
- b a blood bank;
- c a patient/relatives visiting area; and
- d a staff cafeteria.

Specification for placements

3.2.71 Another service that VGH Management Ltd was to provide was the achievement of specifications to enable placements for QMUL students to take place at the GGH or the SLH. If such specifications were not offered at the GGH or the SLH, the Government was to assist the QMUL through the placement of its students at the MDH.

3.2.72 The HSDA stipulated the following four categories of student experience recognised for hospital-based teaching:

- a structured teaching: 4 hours per week;
- b semi-structured teaching: 3x3 hours per week;
- c unstructured teaching: 3x3 hours per week; and
- d self-directed learning: 10 hours per week.

3.2.73 VGH Management Ltd was to ascertain that the learning, assessment and professional development needs of students were met in line with the requirements of the school as set in the HSDA and in the module documentation for each clinical attachment offered by VGH Management Ltd. VGH Management Ltd was to provide the facilities necessary for the delivery of the specified learning requirements of the QMUL Bachelor of Medicine, Bachelor of Surgery (MBBS) programme. Furthermore, VGH Management Ltd was to ensure supervision of teaching and learning of appropriate quality and quantity to support this programme.

3.2.74 Further noted in the HSDA was that unless agreed by both parties, a maximum of four undergraduate medical students from any university were to participate in ward rounds and a maximum of two undergraduate medical students from any university were to be present in each room of an outpatient clinic, theatre or interventional radiology session. No more than 10 undergraduate medical students from any university were to participate in any other form of structured teaching and the number of undergraduate medical students attached to an inpatient clinical area was to be such that the number of patients available was to make it possible for each student to ‘clerk’ two patients a week. A detailed specification of activities was to be derived from the school’s online site.

3.2.75 In respect of the specifications, VGH Management Ltd further undertook, among others, to:

- a ensure that the learning, assessment and professional development needs of students were met in accordance with the QMUL’s requirements, which requirements were subject to annual review;
- b provide the necessary facilities to deliver the specified clinical learning requirements of the QMUL MBBS programme;
- c provide supervision of teaching and learning of appropriate quality and quantity and in the relevant location to support the QMUL MBBS programme during clinical placements;
- d prioritise the development of these clinical placements to support the QMUL programme, negotiating with other universities only with QMUL’s agreement;
- e ensure that students on placement were not put in a situation that was likely to develop beyond their capacity to cope, or to be put at inappropriate risk;
- f ensure that students were closely supervised in their involvement in clinical work and received the necessary training in basic procedures by qualified staff employed by VGH Management Ltd to ensure the minimisation of injury risk;
- g provide staff and students access to library, IT services and clinical skills training facilities on site;
- h provide student access to emergency occupational health and pastoral support services and facilities comparable to those provided to its own staff;
- i provide residential accommodation as required, if covered by a separate agreement;
- j provide transport and/or reimburse student expenses for travel between different sites required during the placement, if covered by a separate agreement;
- k facilitate appropriate opportunities for multi-professional and inter-professional learning;

- l ensure that scheduled teaching obligations were met, bar in exceptional circumstances of clinical urgency;
- m allow staff and students of the school and external examiners access to all appropriate clinical and non-clinical facilities for formal education programmes, clinical instruction, and student assessment, provided that patient care and confidentiality were not compromised;
- n provide an appropriate induction for students to VGH Management Ltd's facilities, policies and procedures;
- o remove students from placement areas for the safety of patients and staff;
- p assist the school, where appropriate, in any fitness to practise proceedings arising from or connected with this Agreement; and
- q inform the school of significant changes in service provision that could affect the quality and/or quantity or provision of undergraduate medical education in line with the service specification.

3.2.76 VGH Management Ltd was required to produce a yearly report including:

- a a list of teachers with accreditation;
- b the number of undergraduate sessions in staff job plans;
- c any locally held student satisfaction data; and
- d results against the KPIs included in the HSDA.

3.2.77 Furthermore, VGH Management Ltd was to host an annual quality visit by the School. Moreover, VGH Management Ltd was to ensure that a student card reading facility was provided and any problems were to be reported to the School.

3.2.78 The HSDA also outlined the QMUL's responsibilities in relation to the placements. The QMUL was responsible for informing VGH Management Ltd of the number of students, periods of attachment, learning outcomes and other information necessary to meet the service specification. The Agreement noted certain issues in relation to students, such as screening for diseases, which the QMUL was to ascertain prior to the commencement of a placement. Provisions in relation to the training and appraisal of teaching staff, learning and teaching facilities and roles, administration and facilities and the School's quality and monitoring requirements were also included in the Agreement.

Charges

3.2.79 All the charges outlined in the Agreement were exclusive of value-added tax (VAT). VAT was to be added at the prevailing rate, as could be applicable and paid by the Government, following delivery of a valid VAT invoice. VGH Management Ltd was to indemnify the Government against any liability in relation to its failure to account for or pay any VAT relating to payments made to it under the HSDA.

Charges prior to the completion date of the project

3.2.80 The Government was to pay VGH Management Ltd €51,000,000 in 2016 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 (Figure 6 refers). These payments were to remain in effect until the completion date of the project.

Figure 6 | Allocated sums in terms of the yearly Government budget

Year	GGH	KGRH	Total
2016	€32,500,000	€18,500,000	€51,000,000
2017	€32,500,000 plus the annual healthcare budget increase for 2017	€18,500,000 plus the annual healthcare budget increase for 2017	€51,000,000 plus the annual healthcare budget increase for 2017

3.2.81 Stipulated in the HSDA was that the allocated sum for 2016 was to include any beds at the SLH that were ready in 2016 at the price agreed as per 'Clause B'. The allocated sum for 2017 was to include any beds at the SLH that were ready in 2016 and 2017 at the price agreed as per 'Clause A'. The NAO was unable to identify Clauses A and B as referred to in the HSDA. Clarification to this effect was sought from the MFH; however, this was to no avail as the Ministry informed this Office that the said clauses, which were to regulate payments in relation to the SLH, could not be traced.

3.2.82 Until the completion date, VGH Management Ltd was to maintain the then current level of beds and services at the GGH and the KGRH.

Charges following the completion date of the project

3.2.83 The HSDA specified the charges payable by the Government to VGH Management Ltd as at the effective date for the provision of services by VGH Management Ltd. While the minimum service delivery fee was to be active at the effective date, it was to become payable only after availability in respect of the applicable milestones through the completion certificate was ascertained.

3.2.84 The Government guaranteed a take up of at least 712 beds per day from the completion date, as defined in the SCA, and throughout the concession period, and was to include the following:

- a 125 acute care beds at the GGH at €600 per bed per day;
- b 175 geriatric care beds at the GGH at €180 per bed per day;
- c 320 geriatric care beds at the KGRH at €180 per bed per day; and
- d 80 rehabilitation beds at the SLH at €300 per bed per day.

3.2.85 The aggregation of these charges resulted in a daily guaranteed fee payable by Government to the VGH of €188,100. Annualised, the guaranteed charge exceeded €68,600,000.

3.2.86 The minimum charge to be paid by the Government to VGH Management Ltd was to include 3,000 hours of surgery annually for surgeries as performed in the current GGH set-up. This allocation would allow for flexibility across specialties and for different durations of surgical interventions. Endoscopy procedures were excluded from this capping. Any additional surgical time was to be billed separately to the Government.

3.2.87 Noted in the HSDA was that the key inclusions in the minimum charge were:

- a medical services as outlined in the Agreement;
- b basic pharmaceuticals and medical supplies consumption, which consumption was to be charged from the start of 2018 and was capped at €1,800,000 per year at the GGH and €300,000 per year at the KGRH. Any additional expenses in this regard were to be incurred by the Government;
- c inpatient care including physicians, nursing and meals;
- d emergency care including emergency room and ground ambulatory services;
- e rehabilitation area including physiotherapy and hydrotherapy services, where applicable;
- f inpatient access to consultations with the specialty visiting doctors from the USA and the UK, when necessary;
- g up to 3,300 surgery hours as performed in the current GGH set-up as of 2014 (of note to the NAO was that the HSDA referred to 3,000 hours in other parts of the Agreement);
- h MRIs within the GGH from 2023;

- i all services offered at the KGRH; and
- j a state-of-the-art rehabilitation centre at the SLH serving inpatients and outpatients.

3.2.88 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, which figure included all dermatology services, 12 inpatient beds and a maximum of 27,500 outpatient visits per annum. The holistic care centre at the SLH was to levy a charge of €20 per visit per patient. Any other costs related to the provision of additional services, provided above and beyond consultation, initial diagnostics and initial medication were to be charged to the Government on an à la carte basis. Additional services provided to the Government and supplementary charges in relation to special care, major services and additional beds (understood by the NAO to signify different bed types not captured in the minimum beds service and guarantee) beyond the daily number of contracted ones as specified in paragraph 3.2.83 of this report were to be charged at the lower of either the price to be charged for medical tourism services, discounted by 30 per cent, or the average charge for the relevant service to the medical tourism patient.

3.2.89 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. Also noted in the HSDA was that the maximum number of yearly airlifts was 200.

3.2.90 Furthermore, an annual minimum healthcare delivery fee was to be payable by the Government. This fee, as well as the other charges outlined in this subsection of the report, were to be increased by an amount equal to the highest of either two per cent or the Consumer Price Index. The increase was to happen annually with effect from the anniversary of the effective date, with the first increase being effected at the start of the second contract year, and being applied every year until the end of the concession period. 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.

3.2.91 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 (Figure 7 refers).

Figure 7 | Daily charge per bed type: Additional beds

Hospital	Hospital bed type	Daily charge per bed (€)
GGH	Acute care	650
	Long-term	180
SLH	Rehabilitation	300
KGRH	Geriatric	180

3.2.92 In summary, the minimum service delivery fee stood at €72,856,500 annually, categorised in the components shown in Figure 8.

Figure 8 | Minimum service delivery fee

Type	Number of Beds	Daily Rate (€)	Daily Total (€)	Annual Total (€)
Acute @ GGH	125	600	75,000	27,375,000
Geriatric @GGH	175	180	31,500	11,497,500
Geriatric @ KGRH	320	180	57,600	21,024,000
Rehabilitation @ SLH	80	300	24,000	8,760,000
Dermatology @ SLH				2,000,000
Holistic Care Centre @ SLH		€20/patient/visit		
Barts Medical School @ GGH				1,200,000
Air ambulance				1,000,000
Total				72,856,500

3.2.93 Noted in the HSDA was that any additional bed requirement above the minimum bed requirement was to be charged a fee as per ‘Clause G’. Also stipulated in the HSDA was the following ambiguous provision, “GoM may time to time require additional beds and services such as surgeries, Lab and Imaging etc. from the Concessionaire.” Charges against these requests were to be levied as per ‘Clause D’ and ‘Clause G’. The NAO was unable to identify Clauses D and G as referred to in the HSDA. Again, clarification to this effect was sought from the MFH; however, this was to no avail as the Ministry informed this Office that the said clauses, which were to regulate payments in relation to the additional bed and services requirements, could not be traced.

Availability

3.2.94 The HSDA also included provisions relating to the availability of beds. A bed was considered available once the following conditions were fulfilled by VGH Management Ltd:

- a the construction of a specific area was completed, and the final occupancy permit had been awarded to that ward or wing;
- b an adequate number of qualified medical professionals were always available to attend to those beds;

- c health and safety standards were to be invariably maintained in the areas where the beds and related services were located; and
- d all services stipulated in the Agreement were available.

3.2.95 Conversely, a bed was considered unavailable and unqualified for the services in the following circumstances, namely if:

- a VGH Management Ltd did not meet any of the conditions as set out under 'Clause J'. It must be noted that the NAO was unable to trace the clause referred to in this respect. Queries directed toward the MFH were also futile as the Ministry could not identify the relevant clause;
- b any bed was situated in a contaminated area or posed a health risk to the end user; and
- c any bed was used by a medical tourism patient.

3.2.96 The HSDA stipulated that VGH Management Ltd was bound to provide the minimum number of beds as per the Agreement. Furthermore, any unoccupied beds allocated to the Government were to remain vacant and could not be used by VGH Management Ltd for medical tourism. The Government was to pay the minimum service delivery fee even for unoccupied beds, bar in cases of unavailable beds. Furthermore, the Government was to have the first right of usage of any available beds for the benefit of end users prior to medical tourism patients.

3.2.97 Also stipulated in the HSDA was that VGH Management Ltd was entitled to provide the committed minimum beds in any of its facilities contemplated in the SCA, without any additional cost to the Government on written approval by the latter. Furthermore, VGH Management Ltd could use a facility outside those contemplated in the SCA only on written approval from the Government.

Key performance indicators

3.2.98 The Government and VGH Management Ltd agreed to identify, establish and review the KPIs annually from 2019. They were also to develop penalties for KPIs that were not achieved as from this year. The Agreement included the proviso that the KPIs to be implemented for 2018 were established and were to be those identified in the Agreement. Targets to be achieved by means of the KPIs were to be used as the basis for calculation of the KPIs for subsequent years. VGH Management Ltd was to provide the Government with a monthly KPI report as from 2018. It was also noted in the Agreement that VGH Management Ltd was to, on the first day of October of the year preceding the upcoming year of review, provide to the Government a full KPI report for the preceding year together with a cumulative KPI report for the immediately preceding nine months and was to propose to the Government the KPIs for the forthcoming year. The proposed KPIs were to meet the following minimum criteria:

- a they were not to be inferior to those of the current year of review;
- b they were not to be inferior to those required by the standards of European healthcare services for services substantially similar to those to be provided by VGH Management Ltd; and
- c they were not to be lower than the performance achieved at the MDH in respect of services that were at the time being provided by VGH Management Ltd following this Agreement, provided that the service levels achieved at the MDH were reasonably achievable by a prudent market operator having the same resources available to it as VGH Management Ltd.

3.2.99 Noted in the HSDA was that the Government was to review the KPIs proposed by VGH Management Ltd and was to have the right to reject them if they did not meet the minimum criteria established in the previous paragraph of this report. A proviso was included in the Agreement specifying that, notwithstanding VGH Management Ltd's proposed KPIs meeting the established minimum criteria, if the Government wished to propose revisions to the proposed KPIs, it was to discuss the revisions proposed with VGH Management Ltd, and if they failed to agree on the KPIs for the following year the dispute resolution clause in the Agreement was to apply.

3.2.100 The Agreement included a theoretical background on KPIs, notably that KPIs should be SMART, which is an acronym standing for specific, measurable, achievable, relevant and time-bound. It was also noted that the following types of KPIs were to be designed and measured in consultation with the Government annually after the first three years from the effective date:

- a process KPIs;
- b input KPIs;
- c output KPIs;
- d leading KPIs;
- e lagging KPIs;
- f outcome KPIs;
- g qualitative KPIs; and
- h quantitative KPIs.

3.2.101 Noted in the Agreement was that the KPIs were only to come into effect after the construction period was completed and the granting of the certificate of completion. The KPIs for the KGRH and the SLH were to commence in 2017, while those for the GGH were to start in 2018. VGH Management Ltd and the Government were to negotiate further clinical and quality indicators yearly.

3.2.102 For the year 2018, the KPIs that were to be implemented with respect to the GGH, the KGRH and the SLH related to building and equipment, employee relations and labour management, and service delivery and quality of care. Details in this regard are included in Figure 9.

Figure 9 | KPIs to be implemented in 2018 at the GGH, the KGRH and the SLH

	KPIs	GGH	KGRH	SLH
Building and equipment	1: Availability of beds	125 acute beds, 25 day beds, 200 long-term care beds	320 long-term care beds	80 rehab beds
	Objective: Ensure the availability of the beds for the Government as per the SCA.			
	Reporting: VGH Management Ltd was to report to the Government on a monthly basis.			
	Target for Year 1 was to collect data giving the Government and VGH Management Ltd visibility on the availability of beds.			
	2: Medical equipment availability	As listed in the RfP and any other equipment that may be agreed for availability of use	As listed in the RfP and any other equipment that may be agreed for availability of use	As listed in the RfP and any other equipment that may be agreed for availability of use
	Objective: Ensuring availability of the equipment as per the RfP and any other equipment that could be agreed on.			
	Reporting: VGH Management Ltd was to provide reporting on a quarterly basis.			
	Target for Year 1 was to collect data giving VGH Management Ltd and the Government visibility on medical equipment availability.			
	3: Comparison of the use of lab and imaging services from MDH before and after VGH operations	Comparison of the use of medical equipment such as MRI and other imaging and lab services	Comparison of the dependency on MDH services before and after the operations of the Concessionaire	Tracking of the number of beds that are made available by providing rehab services at SLH
	Objective: Capturing information to compare the dependency on MDH and assess the demand impacts of lab and imaging services.			
Reporting: VGH was to provide reporting on a quarterly basis.				
Target for Year 1 was to collect data on the decreased dependency on MDH.				

Employee relations and labour management	4: Employee satisfaction: Evaluating the employee satisfaction through transition period	VGH Management Ltd was to hold monthly employee satisfaction surveys	VGH Management Ltd was to hold monthly employee satisfaction surveys	VGH Management Ltd was to hold monthly employee satisfaction surveys
	Objective: VGH Management Ltd would be able to evaluate and adjust the transition process and maintain high rates of employee satisfaction.			
	Reporting: VGH was to provide reporting on a quarterly basis.			
	Target for Year 1 was to collect data providing visibility and the tools to handle employee satisfaction levels and retain staff.			
	5: Employee training, development and progression plan	VGH Management Ltd was to assess existing labour skill levels, provide training and development programs and collect data on career progression	VGH Management Ltd was to assess existing labour skill levels, provide training and development programs and collect data on career progression	VGH Management Ltd was to assess existing labour skill levels, provide training and development programs and collect data on career progression
	Objective: By providing proper training and development VGH Management Ltd would improve delivery of care and employee retention.			
	Reporting: VGH Management Ltd was to provide reporting on a quarterly basis.			
Target for Year 1 was to collect data providing visibility and the tools to provide the necessary training and development needs.				
6: Management of consultants and specialists	VGH Management Ltd would need to ensure the availability of consultants and specialists	VGH Management Ltd would need to ensure the availability of consultants and specialists	VGH Management Ltd would need to ensure the availability of consultants and specialists	
Objective: It was imperative for the success of VGH Management Ltd's operations to manage the availability and scheduling of consultants and specialists. VGH Management Ltd needed to ensure that its own as well as the Government's consultants and specialists worked together to attend to patients' needs.				
Reporting: VGH Management Ltd was to provide reporting on a monthly basis.				
Target for Year 1 was to collect data providing visibility on the availability of consultants and specialists.				

Service delivery and quality of care	7: Inpatient care and various services provided	VGH Management Ltd was to provide all the services outlined and committed in the Agreement and collect numerical data of the number of services provided in each Department.	VGH Management Ltd was to provide all the services outlined and committed in the Agreement and collect numerical data of the number of services provided in each Department.	VGH Management Ltd was to provide all the services outlined and committed in the Agreement and collect numerical data of the number of services provided in each Department.
	Objective: Ensuring that all the services committed by VGH Management Ltd are provided to the patients and collecting the proper information on number of services that are provided to patients over the year to analyse the data and design of future KPIs.			
	Reporting: VGH Management Ltd was to provide reporting on a quarterly basis.			
	Target for Year 1 was to collect data providing accurate information on the quality and quantity of services provided.			
	8: Outpatient care and primary care services	VGH Management Ltd was to provide all services that are outlined in the Agreement and collect the numerical data of number of services provided in each Department.	VGH Management Ltd was to provide all services that are outlined in the Agreement and collect the numerical data of number of services provided in each Department.	VGH Management Ltd was to provide all services that are outlined in the Agreement and collect the numerical data of number of services provided in each Department.
Objective: Ensuring that all services committed by VGH Management Ltd are provided to patients and collecting the proper information on several services provided to the patients over the year to analyse the data and design future KPIs.				
Reporting: VGH Management Ltd was to provide reporting on a quarterly basis.				
Target for Year 1 was to collect data providing VGH and the Government with accurate information on the quality and quantity of services provided.				
9: Number of surgeries including minor, critical and elective	VGH Management Ltd was to provide and track data on the number of surgeries, type and length of surgeries throughout the year			
Objective: VGH Management Ltd was to perform minor, critical and elective surgeries as and when needed at the GGH. Information on the type of surgeries along with the quantity of surgeries was to allow VGH Management Ltd and the Government to prepare and design future KPIs.				
Reporting: VGH Management Ltd to provide reporting on a quarterly basis.				

Target for Year 1 was to collect data providing VGH Management Ltd and the Government accurate information on the quality and quantity of services provided.			
10: IT and hospital management system	VGH Management Ltd was to install and incorporate IT systems to digitalise patient data		
Objective: VGH Management Ltd was to provide a new hospital management system and IT programs to bring the technology up to date at the GGH, the KGRH and the SLH. This would provide the digitalisation of patient record and better synchronisation of patients' critical data.			
Reporting: VGH Management Ltd was to provide reporting on a quarterly basis.			
Target for Year 1 was to collect data providing visibility on the overall operations and provide reporting and analysis tools through modern healthcare IT.			
11: Patient care and satisfaction	VGH Management was to collect and measure patient satisfaction on a monthly basis	VGH Management was to collect and measure patient satisfaction on a monthly basis	VGH Management was to collect and measure patient satisfaction on a monthly basis
Objective: VGH Management Ltd was to collect surveys of patient experience to analyse and understand patient satisfaction levels and adjust and amend services and facilities to improve quality of services and patient satisfaction levels.			
Reporting: VGH Management Ltd was to provide reporting on a monthly basis.			
Target for Year 1 was to collect data providing VGH Management Ltd and the Government visibility on overall operations and provide patient opinion and satisfaction on the services of the Concessionaire.			

3.2.103 Regarding service delivery and quality of care, cited in the HSDA were specific service level KPIs that were to be designed after the first year of KPI information was collected. The VGH and the Government were to review the first year of data and would establish the new KPIs. From that point onwards, these would be reviewed annually.

Special emergency

3.2.104 The HSDA further regulated special emergency services. A special emergency was defined in the Agreement as any emergency resulting from a catastrophic accident or any event that has impacted more than five persons at any given time. Any and all requests made by the Government for VGH Management Ltd to provide any service over and above the healthcare and ancillary services listed in the HSDA to assist the Government in a special emergency was to be acceded to by VGH Management Ltd. Such requests were not to be subject to any review and/or dispute resolution procedure, provided that the exclusion from review and/or dispute resolution was not to extend to any dispute that could arise in relation to compensation due to VGH Management Ltd for the special emergency services provided. The compensation to VGH Management Ltd for such emergency services was to be as provided for in terms of additional services and charges in the Agreement.

The Medical School

3.2.105 The HSDA provided for requirements to be met in relation to the Medical School Agreement, dated 25 February 2015, which regulated the establishment and operation of the Barts and the London School of Medicine and Dentistry in Malta. VGH Management Ltd was to ensure that the requirements of this Agreement relating to clinical placements for QMUL Malta students were met. Accordingly, VGH Management Ltd was to:

- a provide or procure training facilities and placements in Gozo and Malta, with most of the training expected to take place at the GGH. Satisfaction of this requirement necessitated appropriate training facilities. Training was to be in accordance with the curriculum of QMUL Malta and delivered by doctors and other clinical staff employed or engaged at the SLH, the KGRH, and the GGH who must be appropriately skilled, qualified and trained to teach QMUL Malta students in a manner acceptable to QMUL Malta. QMUL Malta's requirements for medical and surgical specialities were outlined in the HSDA;
- b ensure that the training facilities and placements provided satisfied the requirements relating to quality, quantity and breadth of clinical experience that QMUL Malta was expected to fulfil in accordance with the requirements of the General Medical Council, as applicable from time to time and which at the effective date were set out in the publication 'Tomorrow's Doctors' and its associated publications. VGH Management Ltd was also to assist QMUL Malta and the QMUL to facilitate any inspections undertaken, and/or comply with any recommendations made, by the General Medical Council in relation to such training facilities;
- c to offer training facilities to undergraduates, predominantly but not exclusively in Gozo, according to the needs and requirements of QMUL Malta and the facilities of the GGH;
- d to nominate a suitable person acceptable to QMUL Malta who was to coordinate the placements and training; and
- e assist the Government in acquiring enough cadavers for QMUL Malta students as could be required from time to time.

Procedure for payments

3.2.106 The HSDA stipulated that VGH Management Ltd was required to devise a full occupancy report and the services report within three business days from the end of each month. Such reports were to cover the details of each occupied bed, the type of service provided, any medication, lab and imaging services and any surgeries that were performed. A separate monthly consumption report for all the services that were above and beyond the minimum services was to be provided by VGH Management Ltd as per 'Clause C' in the Agreement. Such report had to be itemised per service, costs per service and the applicable 30 per cent

discount to each billing. It must be noted that the NAO was unable to trace the clause referred to in this respect. Queries directed toward the MFH were also futile as the Ministry similarly could not identify the relevant clause.

- 3.2.107** Furthermore, VGH Management Ltd was to generate an invoice for payment of the charges, at the time the charges are expressed to be payable in accordance with the HSDA, together with the monthly billing reports for the request of payment from the Government. The latter had a credit period of 30 days in which to settle undisputed invoices submitted by VGH Management Ltd. All monthly billing reports were to be directed to the assigned representative of the Government, noted in the Agreement as the HMC set up in terms of the SCA and delivered to it through e-mail and registered post. On receipt of such monthly billing reports, the Government had 10 days to review and contest any irregularities perceived by it. The Government could request further information reasonably required to assess the billing report.
- 3.2.108** The HSDA stipulated that bills contested in writing by the Government within 10 days from the issue date of the invoice were to be held unpaid until VGH Management Ltd provided satisfactory clarifications on any contested services. However, the Government could not hold more than 20 per cent of the charges due and payable by it to VGH Management Ltd for the provision of the services in compliance with this Agreement. In this respect, the remainder of the applicable charge was to be paid to VGH Management Ltd within 30 days from the invoice date. It was further noted that any conflict that could be raised from the billing reports and invoices was to be dealt with as per the SCA and the HSDA.
- 3.2.109** Also noted in the HSDA was that if the Government received an invoice that it reasonably believed included a sum that was not valid and properly due, then it was to notify VGH Management Ltd in writing within five days from the date of receipt of the invoice. Furthermore, the Government's failure to pay the disputed charges was not to be deemed to be a breach of the HSDA, provided that the amount withheld by the Government following notification of a disputed invoice or part thereof was not to exceed 20 per cent of the charges. The Government was to pay the balance of the invoice that was not in dispute by the due date. Further noted in the HSDA was that the parties were to submit the matter relating to the disputed charges to dispute resolution, provided that, in the interest of expediency, any matter submitted to dispute resolution in these cases was to be decided within a maximum period of 20 days, unless otherwise agreed by both parties. The decision on this matter taken in the dispute resolution process was to be final and binding.
- 3.2.110** Following resolution of a dispute in favour of VGH Management Ltd, the Government was to effect payment, along with any applicable interest in terms of the Commercial Code (Chapter 13 of the Laws of Malta) and the HSDA, within 30 working days from the date of such decision. It was also noted that in default of payment of the aforementioned sums or a part thereof, VGH Management Ltd was to be entitled to set off the sums owed. Similarly, following resolution of a dispute in favour of the Government, VGH Management Ltd was

to effect payment within 30 working days from the date of such decision, along with any applicable interest in terms of the Commercial Code and the HSDA. If VGH Management Ltd defaulted on the payment of the aforementioned sums or part thereof, the Government was entitled to call on the performance guarantee or the new performance guarantee, as the case could be. It was further noted that where either party was required to make a balancing payment, it was to do so within 30 working days.

3.2.111 Furthermore, VGH Management Ltd was required to maintain complete and accurate transaction records (including in respect of the healthcare and ancillary services and the charges) and supporting documentation for all amounts that could be chargeable to Government pursuant to the HSDA. These records, together with supporting documentation, were to be retained by VGH Management Ltd for inspection by the Government. VGH Management Ltd was required to retain such records for 10 years from the end of the contract year, which year was to commence on the effective date and/or each anniversary of this date, to which the respective transaction records related.

3.2.112 Also outlined in the HSDA was that VGH Management Ltd could not suspend the supply of the services to be provided to the Government if any payment was outstanding, unless permitted under this Agreement, the Emphyteutical Deed, the SCA, the LSA, and any amendments and/or addendum thereto.

3.2.113 In case of overdue payments, without limiting the owed party's remedies, the defaulting party was to pay interest in terms of the Commercial Code on the overdue amount. The applicable interest, to be paid with the overdue amount, was to accumulate daily from the due date until the actual payment of the overdue amount.

3.2.114 Under the HSDA, the Emphyteutical Deed, the SCA, the LSA, and any amendments and/or addendum thereto, the parties could retain or set off any sums owed that had fallen due and were payable against any sums due to VGH Management Ltd or the Government. However, it was provided that any set-off or retention of any sums could only be effected after 30 working days from the date of the respective invoice.

Workforce matters

3.2.115 The HSDA stipulated several requirements that VGH Management Ltd was to adhere to in respect of its employees, staff, other workers, agents and consultants and also of the Government employees made available to it through the LSA. First, VGH Management Ltd was required to make sure that there were sufficient duly registered, qualified and experienced medical, nursing and other clinical and non-clinical personnel so that the services under the HSDA were provided in all respects and at all times as per the Agreement. Furthermore, VGH Management Ltd was required to ensure that personnel engaged to practice a healthcare profession were duly authorised to practice under the applicable laws. It was also required to maintain a record of the licence, warrant, certification or equivalent of its own personnel.

Furthermore, VGH Management Ltd was required to comply with employment and labour laws and other laws, namely in relation to occupational health and safety, equal treatment and data protection. VGH Management Ltd was to make sure that its personnel resided and worked in Malta legally, and to keep records proving such. The HSDA stipulated that applying for and obtaining these permits was the obligation of VGH Management Ltd and/or the individuals concerned. The Government, meanwhile, undertook to issue permits required by VGH Management Ltd to fulfil its obligations emanating from the HSDA, provided that the employees of VGH Management Ltd were eligible to provide the services at the sites in terms of EU regulations and directives. VGH Management Ltd was to immediately report to the Government any material concern in relation to the safety of end users and/or the quality of the outcomes of any service arising from those reviews and evaluations, and also report to the Government on the outcome of those reviews and evaluations at least once yearly.

3.2.116 VGH Management Ltd was also required to adhere to certain guidelines when determining personnel numbers and skill mixes for the services pursuant to the HSDA. In this respect, VGH Management Ltd had to continuously evaluate each service individually and the services altogether. Furthermore, the actual numbers and skill mix of clinical personnel on duty were to be compared against the planned numbers and skill mix of clinical personnel on a shift-by-shift basis. Note was to be taken of the impact of variations in actual numbers and the skill mix of clinical personnel on duty on the experience and outcomes of the end user, through reference to clinical data, data on complaints and the results of the end user and personnel involvements, including surveys. VGH Management Ltd was also required to undertake detailed yearly reviews of staffing requirements, to ascertain that VGH Management Ltd was able to meet the requirements set out in this agreement in relation to the workforce.

3.2.117 The HSDA stipulated further requirements in relation to personnel. If applicable, VGH Management Ltd personnel were to be registered with, and where required, had to have completed their validations by the appropriate professional regulatory authority. VGH Management Ltd personnel were also to have the appropriate qualifications, experience, skill and competencies, warrants and licences to perform the duties required of them and were to be appropriately supervised, managerially and professionally. Government personnel transferred to VGH Management Ltd in terms of the LSA were exempt from these clauses for two years from the effective date. The personnel of VGH Management Ltd and the Government personnel transferred to VGH Management Ltd in terms of the LSA were to be covered by insurance or by the relevant material subcontractor's⁸ insurances providing at least the same cover. Also, all personnel were to carry, and where appropriate display, valid and appropriate identification in accordance with best industry practice and were to be aware of and respect the equality and human rights of colleagues, end users, carers and the public.

⁸ The HSDA defined material subcontractors as follows, "contractor in relation to any contract related to IT suppliers or a contract or number of contracts awarded to any one contractor relating to clinical services and management services exceeding 20 per cent of the annual minimum charges payable by the Government for the provision of the services for the related Site."

3.2.118 Further stipulated in the HSDA was that VGH Management Ltd was to have enacted systems for seeking and recording specialist professional advice and ensure that all staff involved in service provision received proper and sufficient continuous professional and personal development, clinical supervision, training and instruction, as well as a full and detailed appraisal of performance and education and training needs, using applicable knowledge and skills frameworks, and professional leadership appropriate to the services, each in accordance with the standards of their relevant professional body, if any, and in line with best industry practice.

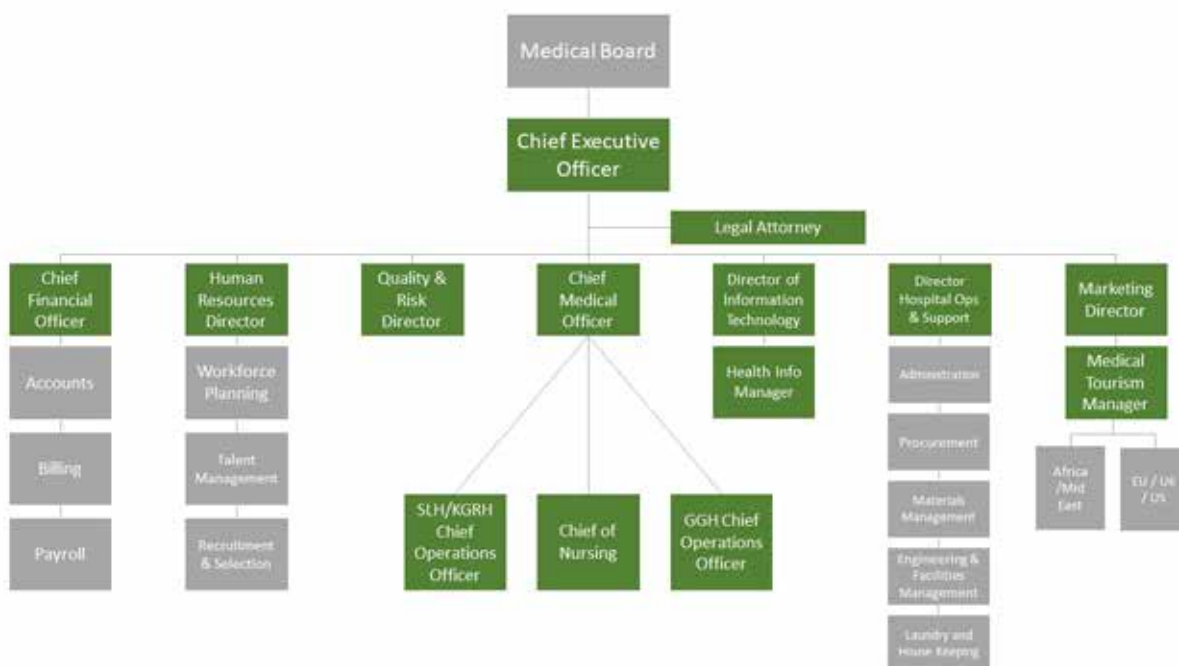
3.2.119 At the Government's request, which could take place only once in any twelve-month period, VGH Management Ltd was to provide details of its analysis of personnel training needs and a summary of personnel training provided and appraisals undertaken.

3.2.120 VGH Management Ltd was to have in place and promote a code and effective procedures to make sure that staff had appropriate means to raise any concerns they could have in relation to the services. It was also to ensure that all material subcontractors had in place and promoted the same. VGH Management Ltd was to ensure that nothing in any contract of employment or contract for services or any other agreement entered into by it or any material subcontractor with any member of personnel was to prevent or inhibit, or purport to do so, the making of any protected disclosure by members of staff.

Key roles

3.2.121 The HSDA identified key roles VGH Management Ltd was always expected to fill. These correspond to the roles highlighted in green in Figure 10. The HSDA stipulated that in the event of any changes to the key roles, VGH Management Ltd was to formally notify the Government in writing. It was also noted that VGH Management Ltd was required to ensure that all key roles were held by people who were qualified, experienced and fully competent to carry out the tasks assigned to them. Furthermore, VGH Management Ltd was not to remove or redesignate any of the key roles without the prior written consent of the Government. The HSDA further stipulated that the key roles were not to remain vacant for a period longer than twenty working days.

Figure 10 | Concessionaire’s key roles



3.2.122 In submissions to the NAO, the MFH noted that a Quality and Risk Director had been appointed but had resigned, and that the Marketing Director and the Medical Tourism Manager had not been appointed as there was no medical tourism yet. The MFH also submitted a risk register to the NAO, wherein it addressed several aspects of risk and weakness relating to the obligations arising in terms of the concession. In this document, the MFH noted that VGH had not notified Government of any changes of key roles. Further submissions to the MFH by this Office confirmed that the Ministry had never been notified of appointments to key positions made by the VGH.

Solicitation of employees

3.2.123 The HSDA also included provisions regarding the soliciting of employees. Neither VGH Management Ltd nor the Government were to solicit or entice, or seek to do this, from the employment of the other party, any person employed or engaged by the other party in the provision/receipt of the services, bar with the other party’s prior written consent, at any time during the term of the Agreement or for a further period of 12 months after the termination of the Agreement other than by means of a national advertising campaign and any other form of recruitment open to all and not specifically targeted at any of the staff of the other party. Failure to abide by the condition of non-solicitation was to result in the breaching party being liable to pay the claiming party a sum equal to one year’s basic salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor, together with recruitment costs incurred by the claiming party in replacing such person.

Service failures

3.2.124 The Agreement stipulated that there were two types of service failures. The first was an ordinary service failure and was defined as a breach by VGH Management Ltd of its obligations under the Transaction Agreements that created a degree of impact on the overall services provided under the Transaction Agreements. For the breach to constitute an ordinary service failure it was to have a minor impact on health, safety, security and infection control prevention measures within the sites and it was not to be a critical service failure. Furthermore, it needed to result from:

- a a deterioration in the overall experience of the end user resulting in a perceptible inconvenience on the overall experience of the end user of health services due to underperformance in ancillary services;
- b minor and insignificant breaches in agreed service requirements or levels of medical service delivery requirements that did not increase health and safety risks to patients; or
- c a noticeable deterioration in the quality and integrity of the facilities, equipment and infrastructure, which if prolonged could result in permanent or major damage to such facilities and equipment.

3.2.125 The second kind of breach was termed in the Agreement as a critical service failure. This kind of failure was described in the HSDA as a material breach of VGH Management Ltd of its obligations under the Transaction Agreements. To qualify as a critical service failure, the breach had to result from:

- a a major deterioration in the overall experience of the end user resulting in a noticeable inconvenience on the overall experience of the end user of health services under the Agreement due to underperformance in services;
- b major breaches in agreed medical service delivery requirements that could increase health and safety risks to patients;
- c a noticeable deterioration in the quality and integrity of the facilities, equipment and infrastructure, which if left untreated could eventually lead to increased health and safety risks on patients and staff;
- d any disease outbreak that had failed to be contained within the specific area;
- e any prolonged health and safety issues that have not been followed up as per health and safety regulations;

- f availability of beds dropping below 75 per cent of the total beds allotted to the Government; or
- g any service requirements that were interrupted for reasons beyond usual repair and maintenance or ceased to exist.

Quality and Assurance Board

3.2.126 The HSDA stipulated that a QAB was to be set up by not later than 24 months from the effective date, and it was to be composed of a minimum of five and a maximum of seven members. The HSDA noted that the QAB was to include the following members:

- a three representatives of VGH Management Ltd, of which at least two were to be experts in the field of medicine;
- b one representative of the Government; and
- c one representative of QMUL Malta.

3.2.127 The QAB was to be responsible for the following:

- a the overall monitoring of the performance of VGH Management Ltd in terms of the service levels to be provided, the Government's requirements for the services and the KPIs as outlined in the HSDA;
- b the overall monitoring of the charges due and payable by the Government to VGH Management Ltd for the provision of the services;
- c the notification to VGH Management Ltd and the Government if VGH Management Ltd's performance fell below the service levels and requirements set out in the HSDA;
- d the proposal of rectification programmes (further details below), the overall monitoring and supervision of any rectification programme together with implementation thereof;
- e reporting to the Government and VGH Management Ltd the result of any rectification programme;
- f reporting on customer feedback;
- g commissioning of quarterly customer satisfaction surveys; and
- h any other matters that either party considered necessary in relation to the HSDA.

3.2.128 The QAB was required to convene at least once monthly to discuss the abovementioned matters and any other related or ancillary matters. The QAB was required to provide a copy of the minutes of its meetings to the Government within seven working days from the date of the meeting. The minutes were to indicate, among other things, the performance of the obligations of VGH Management Ltd under the HSDA in terms of the service levels agreed on, the Government's requirements and the KPIs. Furthermore, prior to the date of setting up the QAB and until the issue of the certificate that was to be issued following the achievement of a concession milestone, VGH Management Ltd was to acknowledge the HMC as the Government's point of contact on service levels.

3.2.129 The Agreement stipulated that if, following receipt of the minutes of the QAB, the Government perceived a breach of any of VGH Management Ltd's obligations under the HSDA, the Government was to notify the QAB of the perceived breach and could require VGH Management Ltd to provide submissions related to such a perceived breach. Where VGH Management Ltd accepted the breach, a rectification programme was to be submitted to the Government and the QAB. This programme was to include a full statement regarding the circumstances in which the breach occurred, together with a full explanation of the reasons for and the impact of such breaches. Furthermore, the programme was to provide a full statement of the measures that VGH Management Ltd intended to adopt and the time period reasonably required to implement such to rectify such breach and/or to preclude or mitigate the consequences or repetition thereof, if any. Also noted in the HSDA was that if VGH Management Ltd's rectification programme ensured that the service levels and Government's requirements were to be adhered to, then no objection thereto could be made nor any changes therein directed by the Government.

3.2.130 On the other hand, if VGH Management Ltd refuted the breach, the Government was to refer the matter to the QAB. The latter was to propose an appropriate rectification programme and supervise its implementation.

3.2.131 The HSDA stipulated that the QAB was to direct the implementation of any rectification programme at VGH Management Ltd's sole cost and expense. The QAB was to furnish a report to the Government and to VGH Management Ltd in this respect, including therein evidence that the results of the implemented rectification programme were adequate to come in line with the service levels and requirements of the Government.

Service credits

3.2.132 Service credits were to apply in cases where, subsequent to the implementation of any rectification programme, VGH Management Ltd failed to correct the breach and achieve the service levels and the Government's requirements within the cure period established in the rectification programme.

- 3.2.133 When an ordinary service failure had been flagged, notified and not been rectified after a minimum of 30 days or any additional reasonable cure period allowed to remedy it, provided it could be remedied, an ordinary service failure deduction was to apply, as provided in Appendix E to this report.
- 3.2.134 When a critical service failure had been duly flagged, notified and not been rectified after a minimum of 15 days or any additional reasonable cure period allowed to remedy it, provided it could be remedied, a critical service failure deduction was to apply, as provided in Appendix F to this report.
- 3.2.135 Further outlined in the HSDA was that the aggregate service failures deductions for each month was to be the addition of the total deductions for ordinary service failures and critical service failures during that month.
- 3.2.136 Also noted in the HSDA was that additional remedial measures were to be taken by the Concessionaire if and when required by the Government if the Government deemed it so expedient to avoid a repetition of the initial breach. It was further stipulated that the Concessionaire was obligated, if a service failure occurred, to notify the Government about it immediately, provide the Government with a rectification programme, deploy all additional resources and take all remedial action necessary to rectify or to prevent the service failure from recurring, and permit the QAB to determine the rectification programme to be implemented by the Concessionaire in line with its terms.

Annual Surgical Operations Performance Adjustment

- 3.2.137 The HSDA also provided for an Annual Surgical Operations Performance Adjustment if VGH Management Ltd did not reach the targeted number of surgical operations for any reason apart from a reduction in demand or a Government default as agreed as part of the service levels of the Agreement. In this case, the Government was entitled to make a surgical underperformance adjustment, the determination of which consisted in the payment of €500 per patient for all:
- a patients waiting for surgery at the GGH; and
 - b patients attending MDH for surgery due to the GGH's inability to provide it (such number of patients was to exclude complex surgeries not provided at the GGH and patients opting to attend surgery at the MDH without approaching the GGH).
- 3.2.138 In the NAO's understanding, this was the only mechanism that allowed for Government to reduce costs in relation to unutilised surgical hours, since these hours could not be rolled over to successive periods nor could they be deducted from the Basic Health Services Delivery Fee.

Net Health Services Delivery Fee

3.2.139 Further noted in the HSDA was that the aggregate service failure deductions for each month and the annual surgical operations performance adjustment were to be reduced from the Basic Health Services Delivery Fee for the relevant month to arrive at the Net Health Services Delivery Fee for the relevant month (Appendix G refers). The number of surgical hours that were included were not to be rolled over to the subsequent calendar year and did not have a monetary value if they had not been used due to either a lack of demand or default on the Government's part. Additionally, VGH Management Ltd was not to be penalised or be liable to any service credits with respect to any unused service requirements by the end user.

Government step-in and step-out

3.2.140 The HSDA outlined the procedure in case VGH Management Ltd committed a non-rectifiable service default, defined in the Agreement as when the total value of service credits, accrued over any three consecutive months, exceeded €500,000 in respect of any one of the sites or when availability of beds as determined and elaborated on in paragraph 3.2.93 fell below an average of 75 per cent over any three consecutive months in respect of any one of the sites. In this event, a Government control step-in would be triggered and the Government control step-in procedures described in the SCA would apply once any necessary changes were made. These procedures were also to apply in case of a national emergency or a force majeure event as indicated in paragraph 3.1.96.

3.2.141 The Government step-out provisions established in the SCA, as listed in paragraph 3.1.102, were also to apply in the event of a Government step-out.

Audit

3.2.142 The HSDA also included provisions with respect to the auditing of VGH Management Ltd. In this respect, VGH Management Ltd was required to maintain complete and accurate transaction records in respect of the healthcare/clinical and ancillary non-clinical services provided by it or on its behalf and of the charges. Furthermore, the Concessionaire was required to submit to the Government the results of any audit, evaluation, inspection, investigation or research in relation to the healthcare/clinical and ancillary non-clinical services rendered by it or on its behalf and to which it had access and was able to legally disclose within 15 working days following the Government's reasonable request.

3.2.143 The Government and VGH Management Ltd were required to implement and respond to all relevant recommendations in any report by a relevant regulatory authority, any appropriate clinical audit, and recommendations otherwise agreed by the parties to be implemented. Such requirement was subject to compliance with the applicable law and best industry practice.

3.2.144 Furthermore, it was also noted that VGH Management Ltd was to, in line with legislation, implement an ongoing, proportionate programme of clinical audit of the healthcare/clinical and ancillary non-clinical services provided by it or on its behalf in accordance with best industry practice. It was also to implement an ongoing, proportionate audit of the accuracy of its recording and coding of clinical activity relating to such services and on request provide the Government the findings of any such audits carried out.

3.2.145 The Government could, once every 12 months, appoint an auditor to audit, at its own expense:

- a the quality and outcomes of the healthcare/clinical and ancillary non-clinical services provided by VGH Management Ltd or on its behalf, including its customer satisfaction surveys and, if deemed appropriate, recommend to the Government the commissioning of Government's own customer satisfaction surveys;
- b VGH Management Ltd's recording and coding of clinical activity;
- c VGH Management Ltd's calculation of the charges;
- d VGH Management Ltd's recording of performance in respect of service levels and requirements set out in the Agreement;
- e pass-through costs on high-cost drugs, devices and procedures; and/or
- f the identification of end users in possession of the European Health Insurance Card and collection of charges from them or other persons liable to pay for them.

3.2.146 VGH Management Ltd was to allow the auditor appointed by the Government to access the transaction records of the services and the charges, books of accounts and other information sources relevant to the HSDA. Draft audit reports were to be shared with VGH Management Ltd before the production of a final report to allow discussion of findings. In the event of any perceived breaches, a review of the QAB would have to be undertaken and a rectification programme set up.

Application of clauses in the Services Concession Agreement

3.2.147 Several clauses and provisions in the SCA were to apply to the HSDA, with the proviso that any necessary changes were made, namely those relating to:

- a the conditions precedent;
- b the performance guarantee and the new performance guarantee;

- c VGH Management Ltd’s due diligence;
- d the handover process;
- e agreements with third parties listed in the SCA, which were at the time in force and binding on the Government;
- f the replacement of end-of-life equipment and technology watch;
- g the setting up of the nursing college;
- h assignment and subcontracting rights;
- i changes to the Agreement including to any of the healthcare/clinical and ancillary non-clinical services provided by VGH Management Ltd or on its behalf;
- j dispute resolution, the governing law and jurisdiction;
- k termination and lapse, including termination payments;
- l hand-back and hand-back inspection;
- m information and confidentiality;
- n the Freedom of Information Act and other transparency obligations;
- o intellectual property rights;
- p change of share control;
- q warranties;
- r conflicts of interest;
- s force majeure;
- t changes in law;
- u HR management; and
- v waivers, consents, amendments, severability and notices.

Disaster recovery and business continuity planning

3.2.148 The Agreement also provided for disaster recovery and business continuity, including testing of a disaster recovery and a business continuity plan. The Disaster Recovery and Business Continuity Plan had to include details on how it would be implemented, how it would inter-operate with other Government plans of a similar nature, and what impact it would have on the services if it came to be invoked. The plan had also to provide for a back-up methodology, data verification procedures, identification of all potential disaster recovery scenarios, provision of appropriate levels of spares, maintenance equipment and test equipment. Also to be listed in the plan were the responsibilities of the subcontractors in case of a disaster, hardware configuration details, the network planning and invocation rules and procedures, data centre site audits, service levels that had to be complied with by the Concessionaire in the event of a disaster, and Government obligations and dependencies. The Concessionaire also had to ensure that the plan defined the processes, activities and responsibilities relating to the application of emergency fixes in business-critical emergency situations. It also had to define the rules related to data storage and data availability as well as provide risk analysis, identify possible areas where system critical elements could be dual sourced to eliminate or minimise single points of failure, as well as provide business continuity maintenance, documentation of business procedures and responsibilities, a communications strategy and procedures for reverting to normal service. The plan had to be reviewed by the Concessionaire and Government annually or at such times as may be requested by Government or the Concessionaire. Queried by the NAO whether the disaster recovery and business continuity plan were in place and tested, the MFH noted that this matter was to be pursued in the future, when the more pressing and critical issues relating to the concession were addressed.

Other requirements

3.2.149 The HSDA also provided for other circumstances that could arise in the execution of the Agreement. Among others, the Agreement included provisions in relation to data protection for the return or destruction of personal data on termination of the Agreement. Furthermore, the HSDA also provided for public health campaigns and public events that VGH Management Ltd was to carry out in consultation with the Government and which had to be approved by the Government, aiming to reduce the end users' need to use the healthcare/clinical and ancillary non-clinical services. Additionally, when marketing the healthcare/clinical and ancillary non-clinical services, VGH Management Ltd was to comply with any guidance issued by or on behalf of the Government or any regulatory authority and with the applicable law. Provisions were also included regarding public relations and publicity, which VGH Management Ltd could not make without the prior written consent of the Government. Enquiries received by VGH Management Ltd regarding the HSDA or the healthcare/clinical and ancillary non-clinical services were to be referred immediately to the Government and it was not to reply without the Government's prior written consent.

3.3 Labour Supply Agreement

3.3.1 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. Essentially, the Agreement regulated the rights and obligations of Government and VGH Management Ltd concerning such labour supply.

3.3.2 The LSA was to run throughout the concession period of 30 years from the effective date as defined in the SCA, if not terminated before in line with the terms of the SCA or through the mutual written consent of Government, VGH Ltd, VGH Assets Ltd and VGH Management Ltd.

Supply of resources

3.3.3 Government was to supply VGH Management Ltd with the staff included in a list of resources. The list of resources was eventually included in an Addendum to the LSA dated 30 June 2017. VGH Management Ltd was to take on and manage these employees from the effective date through the 30-year term of the Agreement. The LSA emphasised that during the concession period, the leased employees were to be considered Government employees, and not VGH Management Ltd employees. The list of resources could be augmented by the mutual written agreement of VGH Management Ltd and Government. In addition, the LSA stipulated that Government could, at its sole discretion, add up to ten employees per annum to the list for the first five years as from the effective date. Thereafter, until the termination of the concession period, Government could similarly augment the list by a maximum of five workers yearly.

3.3.4 The LSA indicated that each leased employee was to meet the requirements of the position they were to fulfil, as per the requirements of VGH Management Ltd and best industry standards.

3.3.5 The conditions of service of the employees supplied from Government to VGH Management Ltd were to be those applicable to them as public officers and public servants. Such conditions were stipulated in the employee's employment contract with Government, any applicable collective agreement and any other employment conditions applicable to them, consisting of but not limited to the Public Service Management Code and any other circular issued by Government to its employees. Furthermore, such conditions were to comprise any wage increases payable to all public employees thereafter and arising statutorily or by virtue of a collective agreement. Additionally, the LSA stipulated that in the event of an increase in the employees' wages/salaries and any other emoluments or benefits, VGH Management Ltd would only bear increases of up to two per cent each year of the annual salary during the concession period for all employees. Government was to bear the additional charges.

Government obligations

3.3.6 The LSA listed the obligations to be adhered to by Government, namely:

- a complying with taxation, social security, and other employment or labour legislation applicable to the leased employees;
- b offering VGH Management Ltd an equally capable replacement employee, if available to Government, should a previously leased employee be absent from work for more than one month. VGH Management Ltd was to notify Government in writing should such a need arise. The MFH confirmed that no such requests were made by VGH Management Ltd during the period under review;
- c removing and/or substituting any member of staff on showing serious and justified cause on the instruction of VGH Management Ltd. Government was forbidden from suggesting the same employee to VGH Management Ltd in the future except with its approval. The NAO established that no such requests were made by VGH Management Ltd during the period of review;
- d assuming responsibility for any leased employee's claim concerning an event or circumstance predating the effective date of the Agreement, brought against it, VGH Management Ltd, VGH Management Ltd's staff, and any entities related to VGH Management Ltd;
- e providing VGH Management Ltd at all times during the concession period with an equivalent number of leased employees as indicated in the list of resources and promptly supplying replacement staff to resolve any shortfall. The LSA noted that the use of the term 'shortfall' in this respect included shortfalls occurring due to leased government employees eventually accepting an offer of direct employment by VGH Management Ltd, and due to an action of and/or instruction for removal of a leased employee given by VGH Management Ltd. It was further noted that VGH Management Ltd could request the Government, in writing, not to remedy any shortfall, in which case the Government and VGH Management Ltd would accordingly reduce the list of resources;
- f assisting VGH Management Ltd by facilitating the recruitment of a replacement employee directly by VGH Management Ltd should it be unsuccessful in providing a substitute employee within a reasonable time. In the event that Government was unable to provide a replacement employee within a reasonable time, the LSA noted that VGH Management Ltd would have the right to substitute the relevant employee by appointing and/or engaging its own staff. It was noted that this obligation did not detract from the fact that Government was to persist in providing VGH Management Ltd with substitute workers to maintain the equivalent number of employees included in the list of resources; and

- g accepting that VGH Management Ltd could require some flexibility in the leasing of the employees supplied to it by the Government, which could at the time of the Agreement not be provided for in the relevant employees' employment conditions. The Government was to use reasonable endeavours to liaise, discuss and negotiate, with the reasonable support of VGH Management Ltd, with the leased staff, their representatives and trade unions, the review of work practices, job descriptions and shift patterns, to accommodate any reasonable requests of VGH Management Ltd in this regard. It was additionally agreed that the Government would have no responsibility or liability to VGH Management Ltd if the deployed employees, the relevant employees' representatives and/or trade unions declined to accept any such amendments to work practices, job descriptions and shift patterns. The NAO was informed by the MFH that the Ministry was not aware of any requests for revisions of work practices, job descriptions or shift patterns during the period under review.

Vital Global Healthcare Management Ltd's obligations

3.3.7 The LSA also stipulated VGH Management Ltd's obligations in terms of the labour supply provided to it by the Government. In this respect, VGH Management Ltd was:

- a responsible for managing and administering the leased employees in compliance with all laws applicable to the Agreement as from the effective date. Such laws could include ones relating to occupational health and safety and data protection;
- b to liaise and cooperate with the Government preceding any action taken or not taken in relation to leased employees;
- c adhere to the procedures and instructions established by the Government from time to time in relation to HR management, data protection compliance, and occupational health and safety of the leased employees;
- d accountable for any claim brought against it, the Government or any Government-controlled entities by a government employee leased to it concerning an event or occurrence at the GGH, the SLH and the KGRH during the employee's deployment, which was demonstrated to be due to its direct act or omission;
- e in charge of the occupational health and safety of the leased employees while they were under its control and management and on duty. Furthermore, it was to indemnify and render the Government harmless:
 - i for any fine imposed, which fine was not in dispute or even though disputed could not be pursued further as a ruling in relation to it was given by a competent court, resulting from a breach of any applicable occupational health and safety legislation; and

- ii for any personal injury sustained by the deployed employees while on duty and arising directly out of the act or omission in respect of which the fine was imposed on the Government.
- f to reimburse the Government for any expenses sustained when attaining employment licences for the deployed employees, if applicable, at rates mutually agreed on by itself and the Government. The MFH confirmed that no expenses were incurred by the Government in this regard;
- g responsible for training each of the deployed employees at no extra cost to the Government to a competence level and standard of performance as could be required by itself for the performance of the duties to be allocated to the relevant employee. However, the LSA noted that it would not be in breach of the Agreement if, on deployment, the employee failed to meet the minimum requirements of the position held at the GGH, the SLH and the KGRH as per best industry standards; and
- h granted full authorisation to oversee and direct the leased employees for the duration of their deployment.

Disciplinary action

3.3.8 The LSA also regulated the disciplinary action to be taken for misconduct by the deployed employees warranting the issue of an admonishment or a written warning. In this respect, subject to the authorisation by the Public Service Commission and the issue of an instrument of delegation, powers were assigned to the Human Resources Manager of VGH Management Ltd to exercise disciplinary control in terms of Regulation 18 and 19 of the Public Service Commission Regulations (1999) (Subsidiary Legislation Const. 03). Other disciplinary action over deployed employees who were public officers would be taken by the PS responsible for health.

3.3.9 The LSA further stated that VGH Management Ltd's Human Resources Manager was to be authorised to exercise disciplinary control and take disciplinary action for misconduct perpetrated by deployed employees who were not public officers, in line with the disciplinary procedure applicable to these employees as established in their employment contract with the Government, where such action warranted the issue of an admonishment or a written warning. Other disciplinary action over the deployed employees who were not public officers was to be taken by the officer in charge of Human Resources of the government-controlled entity that had provided the employees.

Leased employees' records

3.3.10 The LSA also included provisions relating to the leased employees' records. The Government was to hand over to VGH Management Ltd copies of all relevant records in respect of the leased

employees by 23 January 2016. VGH Management Ltd was to keep such records confidential and also maintain all records necessary in terms of all laws, regulations, regulatory policies, guidelines or industry codes applying to the Agreement. According to the MFH, these records were made available to VGH Management Ltd. Furthermore, the Agreement stipulated that VGH Management Ltd was to hand over to the Government all records held in respect of the deployed employees on termination of the Agreement at any time and for whatever reason. VGH Management Ltd was also required to hand over to the Government all records in respect of deployed employees on termination of their deployment, for whatever reason. It was noted that the Government was to be provided with access to VGH Management Ltd's records in respect of the leased employees. Additionally, the Agreement stipulated that reasonable requests for copies/transcripts of such records made by the Government were to be honoured by VGH Management Ltd.

Recruitment by Vitals Global Healthcare Management Ltd

3.3.11 The LSA also regulated recruitment undertaken by VGH Management Ltd with respect to new employees and the direct employment of leased employees.

3.3.12 VGH Management Ltd was to employ any new employees it required. Furthermore, it was free to offer direct employment to the employees leased from the Government. The Agreement noted that if such an offer was accepted, then the member of staff would cease to be employed by the Government and VGH Management Ltd was to become exclusively responsible for the transferred worker and could not ask for a replacement for such employee from the Government. In submissions to the NAO, the MFH confirmed that the VGH availed of this provision and offered direct employment to 10 Government leased employees.

3.3.13 The Agreement also noted that when transferred employees obtained a consent for their release from the Government, the Government and government-controlled entities were to regard them as being on unpaid leave for as long as they were employed with VGH Management Ltd. Through the Agreement, transferred employees who were public officers and in possession of such a consent for release were allowed the right to resume their service with the Government. Furthermore, the Government also undertook to ensure that government-controlled entities employing transferred employees who were not public officers permit these employees to recommence their service with such entities subsequent to the submission of a written request, and VGH Management Ltd was to release such transferred employees without penalty to the Government or the employees themselves.

3.3.14 The recommencement of service with the Government or government-controlled entities was to be on the terms and conditions applicable at that time to employees in the Public Service in the grade originally occupied by the transferred employee. Furthermore, transferred employees released from the employment of VGH Management Ltd and resuming employment with the Government and government-controlled entities were not to be deployed at the GGH, the SLH and the KGRH unless VGH Management Ltd agreed in writing. Transferred

employees resuming service with the Government or with government-controlled entities within twelve months from their direct employment with VGH Management Ltd were to be allowed to take up duties at the same place of work where they were originally assigned, while those recommencing said duties later were to be assigned duties as required by the Government.

Charges, invoicing and payment terms

- 3.3.15** Subject to the provision in paragraph 3.3.5 of this Report, 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. Charges were to be calculated in terms of the applicable employee contract or conditions of work, together with any tax and/or social security contribution due by the employers.
- 3.3.16** It was noted in the Agreement that the wages and/or salaries of VGH Management Ltd's members of staff engaged by the company due to the Government's failure to supply a replacement employee within a reasonable time, which situation is elaborated on in paragraph 3.3.6.f] of this Report, in excess of the payment to be made by VGH Management Ltd to the Government, were to be assumed by the Government. In these cases, the Government was to pay the excess directly to VGH Management Ltd within 15 days from receipt of an invoice in this respect.
- 3.3.17** The Agreement further noted that any overpayments made by VGH Management Ltd pursuant to the charges described, including overpayments on any taxes and social security contributions, were to be refunded to VGH and/or set off against any charges due by the VGH to the Government within 30 days from knowledge thereof.
- 3.3.18** Also stipulated in the Agreement was that the deployed employees' salaries and any applicable allowances and bonuses were to continue being charged by the Government to VGH Management Ltd during any period of such employees' absence from work for grounds allowed by law. Permissible grounds included maternity leave, vacation leave, sick leave and any other benefit enjoyed by the employee in terms of law or the relative worker's employment contract with the Government, any applicable collective agreement and any other conditions of employment applicable to the employee.
- 3.3.19** The Government was to provide VGH Management Ltd with any and all records showing the actual sums payable to each deployed employee, including their employment contracts, applicable collective agreements and other applicable conditions of employment, and was also to provide VGH Management Ltd with a statement of any and all taxes and social security contributions paid by the Government and proof of the actual amounts due. The NAO was informed by the MFH that VGH Management Ltd was responsible for handling the payroll processing service on behalf of the Government. The DG Finance and Administration

MFH and the Advisor MFH provided an element of context to this by explaining that, as the payroll management process was in place at the sites prior to the concession, with trained personnel manning the system, the Ministry decided that the process would continue in the same manner to avoid unnecessary upheaval and training. This Office was assured that the necessary controls were in place to safeguard Government information. The MFH indicated that this system provided VGH with access to details relating to the amounts paid in relation to wages, taxes and social security contributions for the leased employees, thereby eliminating the requirement for Government to provide VGH Management Ltd with any records or statements relating to these payments.

3.3.20 The LSA noted that the Government was to invoice VGH Management Ltd in arrears for the deployed employees' salaries, applicable allowances, bonuses and any tax and/or social security contribution due by employers in relation to the employees every 15 days and VGH Management Ltd was to pay any given invoice within 15 days of receipt thereof provided that the first invoice was presented 15 days subsequent to the effective date. If left unpaid within such period, then interest would accrue thereon at the rate prescribed in the Commercial Code (Chapter 13 of the Laws of Malta). For practicality and to reduce the incidence of errors, the MFH altered the modality of payments to be made to the Concessionaire. This matter is elaborated on in paragraph 6.2.76 of this report.

3.3.21 Further stipulated in the LSA was that notification was to be given to the other party should there be a dispute in respect of a payment made or to be made under the Agreement. The notification was to specify the amount and basis of the dispute. The disputing party was only obligated to pay the undisputed amount of an invoice (if any) on the due date. Provisos were also included in this regard, stating that should the parties agree or determine that:

- a all or part of a disputed amount paid by VGH Management Ltd should not have been paid, the overpayment was to be refunded by the Government within five business days of such agreement or determination with interest as specified in the Commercial Code (Chapter 13 of the Laws of Malta), from the date of such overpayment to, but excluding, the payment date; and
- b all or part of a disputed amount was not paid but should have been, such amount was to be paid within five business days of such agreement or determination with interest at the amount payable in terms of the Commercial Code (Chapter 13 of the Laws of Malta) from the date on which such amount should have been paid to, but excluding, the payment date.

3.3.22 In the Agreement, amounts payable by VGH Management Ltd were expressed as exclusive of any applicable tax but this was in no way to be construed to mean that tax was not applicable where it was due statutorily.

Indemnity

3.3.23 The LSA stipulated other provisions relating to indemnity issues. VGH Management Ltd was to indemnify and hold harmless the Government for any loss suffered from a claim in relation to the occupational health and safety of the deployed employees while they were on duty. Furthermore, VGH Management Ltd was to subscribe to an insurance policy covering all ordinarily insurable risks of the parties relating to the engagement, employment and management of the deployed employees. Lastly, VGH Management Ltd was required to fully indemnify and hold harmless the Government for any loss, claim, or liability, incurred by or raised against the Government for any act or omission done or omitted under the instructions and/or control and/or supervision and/or responsibility of VGH Management Ltd and its staff to the exclusion of the deployed employees. The MFH confirmed that no such fines or claims were brought against the Government in this regard.

Termination of the Labour Supply Agreement

3.3.24 The LSA stipulated that if a party breached any of the Agreement's material terms and conditions and did not remedy such breach within 30 days from the receipt of notice from one or more of the other parties demanding the breach to be remedied, then either or both of the non-defaulting parties had the right to terminate the Agreement. It was further noted that such right would not prejudice any claim for damages and/or any other claim in accordance with Maltese law applicable to the non-defaulting party.

3.3.25 Furthermore, on termination of the SCA, the LSA was to terminate without necessitating any judicial notification.

Dispute resolution procedures

3.3.26 The LSA provided dispute resolution procedures that were to be adhered to in case of any dispute between Government and VGH Management Ltd arising out of or in connection with any aspect of the Agreement. One specific example mentioned in the Agreement was a dispute regarding invoices. If a dispute arose, the parties were to actively seek to negotiate in good faith to resolve it within 20 days from the date of receipt of a formal written notification regarding the matter. According to the LSA, should such negotiations result in a resolution to the dispute, a written memorandum was to be prepared and signed by Government and VGH Management Ltd. Each of the parties was to be supplied with a copy of this memorandum, which was to confirm that the resolution was in full and final settlement of the dispute. The memorandum was also to record all matters in issue, all material factual details of the dispute and the precise terms of the resolution.

3.3.27 If the parties were unable to resolve the matter, either party could refer the dispute to settlement under the ICC Mediation Rules. Additionally, the LSA included provisions for arbitration in case a dispute thereby referred was not settled within 45 days subsequent to

the filing of a mediation request or within a period agreed to by the parties in writing. In this case, the dispute was to be finally settled in accordance with the arbitration rules of the ICC. The LSA stipulated that, in case of arbitration, there were to be three arbitrators, the place of arbitration was to be Malta, arbitration proceedings were to be carried out in English and all correspondence exchanged, including documents presented, were to be in English or to be accompanied by a translation into English. The MFH confirmed that there was no arbitration on pending issues.

3.4 The Emphyteutical Deed

3.4.1 On 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 Grantor); 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 (the Grantee), entered into the Emphyteutical Deed. The CEO MIP Ltd was acting in line with the powers granted to MIP Ltd by virtue of Subsidiary Legislation 169.01, which provided for the transfer of rights and liabilities of the Commissioner of Land to MIP Ltd for sites listed in its Schedule. The powers on the land transferred through the Emphyteutical Deed were transferred to MIP Ltd on 8 March 2016.

3.4.2 The preamble to the deed stated that the granting of the emphyteutical concession of the sites at the GGH, the SLH and the KGRH devolved on VGH Assets Ltd was intended for the Government to achieve various policy objectives, namely:

- a the construction of a
 - i medical school; and
 - ii teaching facilities following consultation with the Government;
- b the development and creation of state-of-the-art research and development healthcare facilities and of a medical campus in Malta and Gozo;
- c the construction and operation of a Regional Primary Care Hub (Health Centre) at the GGH;
- d the redevelopment of the GGH;
- e the creation of a medical campus in Malta and Gozo; and
- f the refurbishment and upgrading of the SLH, the KGRH and the GGH.

Disposal of the sites

3.4.3 The Emphyteutical Deed made reference to Legal Notice 94 of 2016 as amended by Legal Notice 95 of 2016, and Article 2 of the Commissioner of Land Ordinance (Chapter 169 of the

Laws of Malta), through which the sites were designated as land in respect of which all rights and liabilities were to be exercised by MIP Ltd. The Government further declared that MIP Ltd was authorised to dispose of the sites in terms of the Disposal of Government Land Act.

3.4.4 MIP Ltd declared that VGH Assets Ltd had satisfied Government about the benefit that the industrial project within the healthcare industry, comprising the redevelopment and maintenance of the sites by VGH Assets Ltd and the use of the sites by the concessionaire for healthcare and ancillary services, would render to the country's economy. Noted in the Emphyteutical Deed was that, among other benefits, the project was to create an adequate number of jobs.

3.4.5 The Government declared that MIP Ltd was fully empowered in terms of the Commissioner of Land Ordinance (Chapter 169 of the Laws of Malta) and relevant legal notices (360 of 2004 and 361 of 2004) to dispose of the sites in the manner determined by the Disposal of Government Land Act, including through the grant of the emphyteutical title over the sites to VGH Assets Ltd.

The emphyteutical grant

3.4.6 Through the Emphyteutical Deed, MIP Ltd granted VGH Assets Ltd, and the latter accepted and acquired, the title of temporary emphyteusis for 30 years of:

- a the buildings and site occupied by the SLH with its free overlying airspace and subterrain, having a superficial area of approximately 54,728 square metres;
- b the site occupied by the KGRH with its free overlying airspace and subterrain, having a superficial area of approximately 7,683 square metres; and
- c the site occupied by the GGH with its free overlying airspace and subterrain, having a superficial area of approximately 72,880.92 square metres.

3.4.7 Included in the grant were the blocks of buildings, structures and improvements, as well as all internal roads, pathways, open spaces, gardens, parking lots and spaces within the sites.

Terms and conditions

The emphyteutical term

3.4.8 The Emphyteutical Deed stipulated that the emphyteutical grant was for a period of 30 from the date of the deed, effectively lapsing and terminating on 21 March 2046. However, on the expiry of the original 30-year term, the emphyteutical grant could be extended, at the sole discretion of VGH Assets Ltd, for a single and additional term of 69 years. This extended term would last from 22 March 2046 till 21 March 2115.

3.4.9 To exercise this option, VGH Assets Ltd was to submit a judicial letter to MIP Ltd 12 months before the expiry of the original term. The extension could only be made for all the sites in their entirety and under the same terms and conditions of the Emphyteutical Deed. However, according to the Emphyteutical Deed, MIP Ltd could demand the reversion of title in its favour of the KGRH and the GGH from VGH Assets Ltd. If such a demand was made, then the option for VGH Assets Ltd to extend the term would be limited to the SLH.

3.4.10 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 Concessionaire to continue to exploit the site for medical tourism, the latter 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. 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. In further submissions by the Negotiation Committee, the CEO BEAT Ltd and the Partner RSM argued that, while Government was to secure additional capacity at the GGH and the KGRH through the concession, Government's requirements in thirty years' time might be very different from those at the time of signing of the agreement. In turn, the CEO KGRH informed the NAO that he was unaware of what was to happen to the services that were provided from the SLH site and to the operations that were common to the SLH and the KGRH, such as security and transportation, in the event that the concession was not extended but the emphyteutical term for SLH was. The NAO's concern regarding services that there were to be provided from the SLH persist, for it remained unclear how these services were to be managed when the concession was terminated yet the SLH was retained by the Concessionaire.

3.4.11 Following receipt of this judicial letter, MIP Ltd was to accept the request for an extension and enter into all agreements and documentation required to finalise and formalise such extension. Stipulated was that these agreements were to include the terms and conditions of the original Emphyteutical Deed. The ground rent payable was to be revised upwards as per the provisions of the original Emphyteutical Deed.

The ground rent

3.4.12 The deed established separate annual temporary ground rents payable by VGH Assets Ltd in consideration of the temporary emphyteutical grant for each site. The sums payable amounted to €309,188 with respect to the SLH, €59,062 with respect to the KGRH and €156,750 with respect to the GGH. The ground rent was to be paid to MIP Ltd annually in arrears. The first payment was due and payable on 22 March 2017, with subsequent payments occurring on the 22 March of each year of the grant.

3.4.13 If VGH Assets Ltd chose to extend the term of the Emphyteutical Deed, the ground rent due and payable during the extension was subject to an immediate increase of 30 per cent from the commencement of the extended term. Thereafter, the ground rent was to be revised every five years by five per cent, calculated on the ground rent payable immediately prior to the date of the revision. The Office sought to understand the rationale behind these revisions. 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, effectively tied the increase in revenue generation to the fulfilment of an optional condition and resulted in less revenue overall for Government. Limited insight was provided to the NAO in submissions by MIP Ltd, which stated that rather than increasing the ground rent by five per cent every five years as from the sixth year of the initial term, it was decided to apply a single increase of 30 per cent on the commencement of the extended term. In turn, the Negotiation Committee stated that the RfP was mute on this point, which constrained the inclusion of provisions regulating increases in ground rent to a post-concession scenario. Nevertheless, the Negotiation Committee maintained that this matter was not considered material since the value of the increase in ground rent equated to an aggregate €2,000,000 in nominal terms over the period, which when discounted amounted to €600,000 in present value terms. Notwithstanding that stated by the MIP Ltd and the Negotiation Committee, 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 the revenue generated through the lease of the sites.

Use of the immovable property

3.4.14 The purpose and object of the Emphyteutical Deed was stated to be the granting by title of temporary emphyteusis of the sites ‘tale quale’ in order for VGH Assets Ltd, in line with that stipulated in the deed, to procure the development obligations stipulated in the SCA to redevelop the sites and for the sole use of the sites for the provision of healthcare and medical services and ancillary and related services, including the services envisaged in the SCA. VGH Assets Ltd was to use the sites, and procure that they were used, solely and exclusively for the purposes described in the Emphyteutical Deed, and that no part of the sites was to be used by VGH Assets Ltd, its successors in title, or assignees for any other purpose without the prior authorisation of MIP Ltd. It was further stipulated in the Emphyteutical Deed that MIP Ltd did not provide VGH Assets Ltd any warranty against any latent defects within the sites.

Obligations and warranties of Malta Industrial Parks Ltd

3.4.15 The deed specified both parties’ obligations and warranties, ranging from standard disposal of land contract clauses to more specific ones pertinent to this transaction. An overview of the latter is being provided here.

3.4.16 One of the obligations of MIP Ltd was to accept VGH Assets Ltd’s and/or its assignees’ right to encumber the sites in favour of persons or entities providing VGH Assets Ltd with debt

funding and other credit facilities under one or more of the financing arrangements, including security trustee, appearing on the financing arrangements with VGH Assets Ltd and approved by the Government by the creation of security interests, and/or hypothecary guarantees on or over the sites. Similarly, it was permissible for VGH Assets Ltd and/or its assignees to create any encumbrance and/or burden over the sites in the event that the encumbrance and/or burden was securing and/or guaranteeing an investment and/or transaction required for VGH Assets Ltd to fulfil its obligations or allow the Concessionaire to fulfil its obligations under the Transaction Agreements. Securities or guarantees were also permissible if they related to an investment or transaction benefitting the health sector in Malta. In explanations provided to the NAO in relation to this clause, MIP Ltd indicated that it was standard MIP Ltd policy that property granted under title of emphyteusis could be utilised to securitise credit facilities, and that therefore such a clause was a standard one in the emphyteutical deeds entered into by MIP Ltd. The risks to MIP Ltd and Government posed by the inclusion of this clause had been evaluated at the time when the use of MIP Ltd property as collateral became policy.

3.4.17 MIP Ltd warranted in favour of VGH Assets Ltd, which accepted, the vacant and peaceful possession, good title and real enjoyment of the immovable property granted on emphyteusis by means of a general hypothec over all its property. For the purpose of registration of the general hypothec, MIP Ltd and VGH Assets Ltd agreed to the sum of €1,575,000. In replies provided to this Office, MIP Ltd confirmed that the hypothec was registered in its name. Of note was that, according to the deed, MIP Ltd's liability in favour of VGH Assets Ltd, the Concessionaire and their rightful assignees was not limited to this amount. On enquiry, MIP Ltd explained that the Emphyteutical Deed solely regulates the title to the property, and therefore liabilities referred to are limited to this context and not to the concession in general. Additionally, the Emphyteutical Deed provided that VGH Assets Ltd was precluded from reducing the general hypothec and/or registering a special hypothec pursuant to the general hypothec. In reply to queries submitted by the NAO, MIP Ltd stated that the preclusion of reducing the general hypothec to a special hypothec was introduced to ensure that the sites were never encumbered by the conversion of the general hypothec. This is because the general hypothec is not attached to the sites granted, whereas the special hypothec is attached to a particular immovable.

3.4.18 MIP Ltd was also bound not to interfere in activities related to medical tourism undertaken from the sites except where required by the applicable law and/or relevant regulatory authority. In addition, it was also bound not to interfere in whatever manner in the concession and healthcare services, except as stated in the deed and in terms of the applicable law. Furthermore, MIP Ltd could not place or create, nor allow any public authority or another third party to place or create any burden or encumbrance on any part of the sites or on any rights of VGH Assets Ltd and/or its assignees. In addition, MIP Ltd was to ensure that the sites were not encroached on and to remove encroachments, and was not to sell, transfer, alienate, or in any manner dispose of or otherwise encumber the sites. This obligation not to encroach was also extended to any land or property, no matter if privately or publicly owned,

adjacent to the sites. MIP Ltd also allowed VGH Assets Ltd, the Concessionaire and/or its assignees or delegates to commence the performance of the development obligations and provide the healthcare and ancillary services in terms of the Transaction Agreements on and from the date of entry into the deed.

3.4.19 Through the Emphyteutical Deed, MIP Ltd and VGH Assets Ltd declared that parts of the sites were occupied and/or being used by third parties. In respect of these, MIP Ltd guaranteed VGH Assets Ltd, which accepted, the vacant possession of the third-party sites by the deadlines stipulated in Figure 11. These time limits could be extended only if VGH Assets Ltd consented to this extension in writing.

Figure 11 | Period allowed from date of signing of the Emphyteutical Deed for the relocation of third parties

Third party	Period allowed
Blood Bank	5 years
Malta Enterprise property	2 years
Child Development Assessment Unit	2 years
Detox Centre – Substance Misuse Outpatients Unit	1 year
Administration building at the GGH	1 year
Any other parts of the sites used and/or occupied by third parties	9 months

3.4.20 The Emphyteutical Deed regulated the situation until vacant possession of the above occupied sites was granted to VGH Assets Ltd. In this respect, until MIP Ltd secured vacant possession, VGH Assets Ltd was to grant pedestrian and vehicular access to the users and/or occupiers of these sites through the main gate of the SLH and its internal road and/or passages in such manner as may be determined by MIP Ltd from time to time. VGH Assets Ltd was to also grant pedestrian and vehicular access through the main gate of the SLH and its internal roads and/or passages to the users and/or occupiers of Hookham Frere Primary School throughout the original and extended term, as the case may be, as determined by VGH Assets Ltd from time to time. VGH Assets Ltd was also to grant pedestrian and vehicular access through the GGH and its internal roads and/or passages to the users and/or occupiers of Bishops Conservatory School and the residential property situated at Tal-Ibrag, limits of Victoria, Gozo. Similar to the access in relation to the Hookham Frere Primary School, such access was to be allowed throughout the original term and, if applicable, the extended term, in the manner determined by VGH Assets Ltd. Additionally, VGH Assets Ltd was to grant Government access to and non-exclusive use of the helipad within the SLH throughout the original term and, if applicable, during the extended term. MIP Ltd and VGH Assets Ltd were to collaborate to ensure the efficient and coordinated utilisation of the helipad in accordance with their respective requirements.

3.4.21 It was further stipulated that the Police Station and the Bank of Valletta (BOV) automated teller machine (ATM) were not being granted with vacant possession through the Emphyteutical Deed. In the case of the Police Station, VGH Assets Ltd was to allow its use by Government, at no cost to Government, as a police district office throughout the original term and the extended term, if applicable.

3.4.22 Save for the aforementioned occupied areas, that is, the Police Station and the BOV ATM, the remaining areas and buildings within the sites were being transferred by MIP Ltd to VGH Assets Ltd with immediate free and vacant possession through the deed.

Obligations and warranties of Vitals Global Healthcare Assets Ltd

3.4.23 VGH Assets Ltd agreed to keep the sites in a good state of maintenance and repair and ensure that no damage to them is inflicted by or attributable to it, whether directly or indirectly. Additionally, VGH Assets Ltd was not to dispose of or encumber the sites except as specified in the Transaction Agreements or as authorised in writing by MIP Ltd. These obligations were to be carried out at the expense of VGH Assets Ltd.

3.4.24 The deed stipulated that VGH Assets Ltd was to undertake or procure that the Concessionaire undertook development, construction works and maintenance of the sites to discharge the development and maintenance obligations relative to the sites. VGH Assets Ltd was to undertake the development obligations in line with development permits, which permits it was to procure from the competent authorities, and the relevant laws and regulations. All works and improvements were to accede to the immovable property, without VGH Assets Ltd having any right to demand or claim any compensation from MIP Ltd. Additionally, VGH Assets Ltd could impose all the development and maintenance obligations to a competent third party, on approval by MIP Ltd, which third party would take on liability and responsibility for these obligations. In such case, following MIP Ltd's approval of the third party and the agreement with the third party to undertake the aforementioned obligations, VGH Assets Ltd would be discharged from its obligations. Further noted in the Emphyteutical Deed was that MIP Ltd released and discharged VGH Assets Ltd from the undertaking of the development and maintenance obligations to the extent that these were fulfilled by the Concessionaire. In reply to queries by the NAO, MIP Ltd stated that the development obligations were transferred to the Concessionaire and such transfer was subject to approval of the third party to whom such obligations were to be transferred to as well as approval of the agreement between VGH Assets Ltd and the third party.

3.4.25 Another obligation of VGH Assets Ltd related to a road that had been schemed and identified by the competent authorities for formation within the perimeters of the GGH site. In this respect, VGH Assets Ltd agreed not to excavate, develop or construct at any time and in any manner any part of the site destined for the formation of this road and to not demand or claim any payment or compensation whatsoever from MIP Ltd or any other part of Government for any part of the site of the GGH that may be taken for the formation of such schemed road. However, embellishment works could be carried out by VGH Assets Ltd.

3.4.26 Furthermore, VGH Assets Ltd agreed to take out an insurance policy at its own expense during the period in which the development obligations on the site were being carried out. This insurance policy was to be known as 'Project Insurance/Contractors' All Risks Insurance'. Following the completion of the development obligations and throughout the original

term, and if applicable, the extended term, VGH Assets Ltd was to adequately insure with a reputable insurance company licensed to operate in terms of the applicable law:

- a the sites against material damage, in the joint names of the Government of Malta, MIP Ltd and VGH Assets Ltd;
- b an item covering 12 months' ground rent receivable by MIP Ltd, in the joint names of MIP Ltd and VGH Assets Ltd, with cover operative following a claim under the material damage insurance policy;
- c against third party liability, including legal costs and expenses, to cover any loss, damage, injury or death to third parties; and
- d its operations and activities against all normal risks.

Special legal privilege

3.4.27 Through the Emphyteutical Deed, MIP Ltd reserved the special legal privilege on the sites and any eventual improvements erected thereon in warranty of the faithful performance and observance of all the conditions of the deed, particularly the punctual payment of the ground rent. The note of privilege was to be registered for €525,000. MIP Ltd granted its consent for the postponement of this privilege and all rights emanating therefrom in its favour, to the rights emanating to the primary lenders of VGH Assets Ltd. In reply to queries submitted by the NAO, MIP Ltd stated that this clause was included to facilitate financing. MIP Ltd maintained that its interests were still safeguarded as a priori consent of the primary lenders was required, which consent could also be qualified by conditions.

Transferability of the temporary utile dominium

3.4.28 Conditional on the prior authorisation of MIP Ltd, the deed allowed for the transfer, alienation, assignment or disposal of the sites, or on any part thereof, under any title to any third party of good standing. VGH Assets Ltd was to inform MIP Ltd in writing, not later than three months before the intended date of transfer and alienation and provide MIP Ltd with the information required to consider the authorisation request. This authorisation was not required if the transfer, disposal, alienation and/or assignment of the sites was made to a group company of VGH Assets Ltd. However, a change in the person or persons controlling VGH Assets Ltd did require prior written consent of MIP Ltd. The creation of a security interest over the shares in issue of VGH Assets Ltd or its parent in favour of a primary lender was not deemed to be a change in control of VGH Assets Ltd. Further stipulated in the deed was that VGH Assets Ltd would be transferring the sites to the Concessionaire for the latter to provide the concession and healthcare services therefrom, and that MIP Ltd consented to this.

3.4.29 On each transfer, bar in the case of intra-group transfers or transfers to the primary lenders, MIP Ltd was to receive a laudemium equal to one year's ground rent from the assignee, or in the case of a partial transfer, a proportionate share of the annual ground rent calculated pro rata according to the superficial area being transferred. The laudemium was to be paid immediately on the publication of the deed of transfer and under the pain of nullity of the said deed. MIP Ltd was to appear on the deed to recognise the assignee and to receive the laudemium. The assignee was to provide MIP Ltd a free legal copy of the deed of transfer within two months from the date of publication. In case of non-provision, a penalty of €500 applied per day of default.

3.4.30 MIP Ltd, conditional on the prior written consent of VGH Assets Ltd and the primary lenders, could also transfer its rights and obligations under the Emphyteutical Deed to any third party with sufficient legal capacity and credit status to enter into and meet its obligations.

Events of default and termination

3.4.31 The Emphyteutical Deed listed several events of default and termination that would result in MIP Ltd or VGH Assets Ltd terminating the contract.

3.4.32 MIP Ltd could terminate the deed if any of the following events occurred:

- a at any time VGH Assets Ltd owed it by way of ground rent a sum of three yearly ground rent payments;
- b VGH Assets Ltd failed to use the sites or any part thereof as required by the deed; and
- c the sites deteriorated considerably and VGH Assets Ltd failed to show that this was not its fault or that of its assignees and/or delegates.

In these cases, MIP Ltd could demand the dissolution of the deed and the reversion in its favour of the immovable property and any improvements, without paying compensation to VGH Assets Ltd and without prejudice to any other right granted to it by law against VGH Assets Ltd.

3.4.33 On the other hand, VGH Assets Ltd could terminate the deed if any of the following circumstances occurred:

- a MIP Ltd failed to perform its obligations under the deed; and
- b the Government expropriated, requisitioned, confiscated or nationalised all or part of the sites.

In these cases, VGH Assets Limited could demand the dissolution of the deed without prejudice to any other right granted to it by law against MIP Ltd.

- 3.4.34 Otherwise, and unless VGH Assets Ltd did not request an extension to the term, the deed was to terminate on the lapse of the original term. If VGH Assets Ltd opted to extend the term, the deed would similarly terminate on the lapse of the extended term. The deed could also be terminated on the mutual agreement of VGH Assets Ltd and MIP Ltd. On termination of the deed, MIP Ltd had the power and the authority to take back physical possession and control of the sites.
- 3.4.35 MIP Ltd was to communicate its intention to reverse the title to the KGRH and the GGH at least 24 months prior to the lapse of the original term. In this event, the two hospitals were to be transferred back to MIP Ltd free from encumbrances, 'tale quale' and with no warranty for latent defects. Furthermore, VGH Assets Ltd was to remove from the sites any assets that MIP Ltd chose not to retain. These conditions were to be fulfilled at the expense of VGH Assets Ltd.

Other provisions

- 3.4.36 The Emphyteutical Deed also provided for other matters and for circumstances that could arise in its execution. It stipulated that the applicable governing law and jurisdiction was the Maltese one and that any dispute resolution matters were to be handled by the Maltese courts. The deed also provided for fiscal clauses and declarations. It was noted that all taxes and other charges were to be payable by VGH Assets Ltd. VGH Assets Ltd was to pay duty on documents totalling €420,000, and also incurred notarial fees. MIP Ltd was exempt from the payment of duty on documents. The NAO confirmed that duty on documents, amounting to €420,000, was paid by VGH Assets Ltd.

Chapter 4 | Revisions to the contractual framework

4.1 First Addendum to Health Services Delivery Agreement

4.1.1 A week after the signing of the HSDA, on 7 December 2015, the Government, represented by the Minister for Energy and Health, as duly authorised during Cabinet meeting number 102, and VGH Management Ltd⁹, represented by Ram Tumuluri, entered into an Addendum to the HSDA. The NAO's review of records provided by the Cabinet Office with respect to this meeting confirmed this, for that endorsed in meeting 102 related to the commencement of negotiations with the preferred bidder and the eventual conclusion of the relative agreements in line with Government's requirements and objectives as outlined in the RfP. This Addendum was the first of three such addenda.

4.1.2 Noted in the first Addendum was that the Government had identified an increased need for further beds at the GGH and the KGRH, over and above the minimum number of beds agreed to in the HSDA. Through the first Addendum to the HSDA, the Government agreed to take up, and VGH Management Ltd to supply, the following additional beds:

- a 25 acute care beds at the GGH at €600 per day per bed;
- b 25 geriatric care beds at the GGH at €180 per day per bed; and
- c 50 geriatric care beds at the KGRH at €180 per day per bed.

4.1.3 It was further noted that, provided that the parties agreed on the terms and conditions under which such services were to be provided, the Government could request VGH Management Ltd to provide a number of services that VGH Management Ltd was able to provide. These included services relating to orthopaedics, cardiology, heart surgery, gastroenterology, urology, anaesthesiology, internal medicine, medical oncology and haematology, trauma and emergency care, orthotics and prosthetics, respiratory medicine, neurology, immunology, allergy care, diabetic care, and medical laboratory and pathology services.

4.1.4 On reviewing the list of services included in the first Addendum, the NAO noted that many of the services listed were also included as services to be provided under the agreed minimum service fee in the HSDA. As the Addendum stated that the parties were to agree on the terms and conditions under which such listed services were to be provided, it is unclear to this Office whether they were to be considered as services included in the minimum service fee or whether they were additional services to be separately charged to Government. Following

⁹ Reference to VGH Management throughout the Agreement included its permitted and lawful successors and assigns.

queries raised by this Office, the MFH clarified that the restatement of services through the addenda to the HSDA was intended to reduce the obligations of the VGH in providing certain services.

4.2 Second Addendum to Health Services Delivery Agreement

4.2.1 The Government, represented by the Minister for Energy and Health, and VGH Management Ltd, represented by Ram Tumuluri, entered into a second Addendum to the HSDA on 7 December 2015. It was noted that the documents were intended to be read and construed as one document, with the HSDA and the first Addendum remaining in full force.

4.2.2 In the context of the healthcare services cited in the HSDA, the second Addendum provided a list of services, activities and operations that could be carried out by VGH Management Ltd as part of the concession. These comprised accommodation, apparatus, consultation, investigation, laboratory investigations, outpatient visits, operations, procedures, radiology investigations, transport and treatment services.

4.2.3 A clause in the HSDA relating to the charges payable by Government prior to the completion date of the project was also supplemented through this Addendum. Newly provided was that the sum payable was to be invoiced by VGH Management Ltd to the Government every three months in advance with the first payment falling due and payable within five days from the effective date.

4.2.4 Further changes to the HSDA involved the elimination of several services previously listed as services to be offered at the GGH, with the resultant list of services being equivalent to the services that were being provided at the GGH at the time. Some of these changes included the removal of acute services such as plastic surgery and burns, paediatric intensive care, and pain management services such as chiropractic and behavioural medicine services. Genetic counselling services were also eliminated from the services listed under obstetrics and gynaecology services. Additionally noted in the Addendum was that the GGH would need to develop further clinical programmes in accordance with population needs and advances in medicine.

4.2.5 Further changes made through the Addendum involved the removal of the obligation for the VGH to:

- a** deliver the latest medical oncology and haematology care including, chemotherapy, biological and other targeted therapies, haematology services, access to national clinical trials, and support services for patients and families, even though the general obligation to provide services for medical oncology and haematology remained unchanged;
- b** provide genetic testing in respect of medical oncology and haematology;

- c set up a department of neurology, including a dedicated team of specialists with subspeciality expertise in each of the domains of adult neurology. This obligation was substituted with the requirement for the VGH to set up a neurology service including the necessary specialist/s and trained nurses. Noteworthy is that the services to be provided in relation to neurology remained the same, bar for the removal of spinal cord disorders; and
- d provide clinical and laboratory immunology services, and a wide-ranging service at the GGH for the investigation, diagnosis and treatment of conditions resulting from dysfunction of the immune system. In the original HSDA, it had also been noted that the integration of laboratory and clinical immunology services would have allowed the GGH to provide the cutting-edge laboratory testing service, essential in the diagnosis and monitoring of complex immune diseases. Clinically there were to be two main areas of specialisation, namely, allergy and primary immunodeficiency.

4.2.6 Yet another salient change to the wording of the HSDA related to the elimination of the requirement for the VGH to set up a full cardiology service at the GGH to improve access to such services. This requirement was substituted with an obligation for the VGH to improve access to cardiology services. Several other changes were made to the section in the HSDA dedicated to cardiology. The first change was the elimination of the commitment for the VGH to make available at least five dedicated cardiology beds in the cardiology wing that were not included in the acute general beds. The second and most pertinent change was the elimination of the commitment for the VGH to make available for local needs the state-of-the-art Heart Centre it intended to set up for medical tourism purposes. This would have provided cardiology, vascular, and cardiothoracic services. In the original HSDA, it had been noted that the Centre would eliminate the need to transfer the patients to alternative locations to receive the specialist services required. Instead, in the second Addendum, it was noted that the timely transfer of patients elsewhere to receive specialist services was required. Also removed were the provision of interventional procedures within the Cardiac Catheterisation Lab, a Post Coronary Intervention Unit, an advanced Arrhythmia Centre and an Endovascular Surgery Centre. Newly included in the Addendum was the provision of cardiac physiology, including diagnosis and treatment of arrhythmias. Further changes to the cardiology services included the removal of the provision catering for customised, tailored care plans centred on evidence-based best practice, diagnostic testing to be based in one central location, and the possibility for patients to undergo tests and discuss the results with the doctor on the same day. The following are the vascular disease and heart disease treatments that were removed from the list of services to be provided at the GGH:

- a vascular disease treatments;
 - i endovascular procedures: angioplasty, thrombolysis, stenting;
 - ii simple and fenestrated endovascular repair of aneurysms;
 - iii open laparoscopic and laparoscopic-assisted aortic vascular procedures;
 - iv carotid artery procedures; and
 - v management of lymphatic disorders of the peripheries; and

- b heart disease treatments;
 - i alcohol septal ablation;
 - ii angioplasty and stenting;
 - iii cardiothoracic surgery;
 - iv carotid endarterectomy;
 - v congenital heart disease repair;
 - vi extracorporeal membrane oxygenation;
 - vii heart surgery;
 - viii interventional cardiology;
 - ix paediatric heart treatments;
 - x cardiac rehabilitation; and
 - xi structural heart disease treatments.

4.2.7 The Addendum also introduced new services to be provided at the GGH. Acute geriatric care services, and infusion catheter care at the Medical Oncology and Haematology Department were newly included. It was also noted that the medical oncology unit would be liaising with other disciplines.

4.2.8 A further notable change related to gastroenterology and endoscopy services. While the original HSDA emphasised that the goal was the elimination of referrals to the MDH, the Addendum noted that the goal was to reduce the need for referrals to the MDH and handle as many cases as possible at the GGH. Specialist services to be provided in this area previously included a hepatology clinic; however, this was removed through the second Addendum.

4.2.9 Changes were also made to paediatric services to be provided at the GGH. Noted in the Addendum was that an intensive care holding bay would be necessary to allow observation and stabilisation of patients needing transfer to neonatal and paediatric intensive care facilities. It was further noted that appropriate transfer equipment needed to be readily available. The intensive care holding bay had not been mentioned in the original HSDA.

4.2.10 Regarding imaging, the Addendum newly stipulated that access to specialist expertise not available at the GGH would be provided. Interventional ultrasound was also listed as a new service to be provided by the Department of Medical Imaging. Services removed through the Addendum with respect to the Department of Medical Imaging were sleep labs, neurodiagnostics, intensive monitoring and electronystagmography.

4.2.11 Further changes related to the Medical Laboratory and Pathology Department. In the original HSDA, the clinical services that the GGH laboratory was to support had been indicated. These included the Heart Centre, the Rehabilitation Centre, and the Cancer Centre. In the second Addendum, these Centres were removed. Furthermore, a provision in the original HSDA, which specified that a wide variety of routine and esoteric tests were to be performed by the Anatomic Pathology, Biochemistry, Haematology and Transfusion Medicine and Microbiology

divisions, was removed. It was instead noted that outsourcing to other labs could be necessary for specialised investigations.

- 4.2.12 Several standards and guidelines that had been specifically mentioned in the original HSDA were removed through the second Addendum. The requirement for the emergency and trauma centre to achieve and maintain a level 1 accreditation, where reference was made to the European Resuscitation Council, the European Society for Trauma and Emergency Surgery, the European Society of Anaesthesiology and the European Society for Emergency Medicine and European Trauma Course Organisation, was removed and substituted with the requirement to achieve and maintain accreditation as an emergency department, with no specification as to what type of accreditation was to be achieved. Furthermore, the original HSDA referred to internationally recognised protocols and guidelines for patient management applicable for all presenting conditions. The protocols and guidelines cited in this regard included those of the National Institute for Health and Care Excellence, UK College of Emergency Medicine and European Resuscitation Guidelines. Mention of these protocols and guidelines was removed through the second Addendum. The specific mention of the standards to be followed in relation to staff training and peer assessment for intensive care unit staff, that is, those recommended by the European Society of Intensive Care Medicine, the Society of Critical Care Medicine, the British and the American Society of Critical Care Medicine, the British and the American Society of Critical Nursing, was also removed through the Addendum.

4.3 Agreement for the payment of an additional concession fee

- 4.3.1 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.
- 4.3.2 Noted in this Agreement was that the Government could claim payment from VGH Management Ltd of an additional concession fee, which fee was not to exceed €2,800,000. The Government was to submit a notice for payment in writing, along with appropriate documentation substantiating the claim. On receipt of the notice, VGH Management Ltd could, at its discretion, pay the additional sum if it was satisfied with the documentation submitted.
- 4.3.3 The terms and conditions for the payment of the additional fee were to be agreed by the Government and VGH Management Ltd following receipt of the notice for payment submitted by the Government. However, VGH Management Ltd bore an obligation to pay within six months from receipt of the notice. Also noted in the Agreement was that the Government was to refund the paid additional fee to VGH Management Ltd over a period to be agreed between them over a period of five years from the date of payment of the additional sum by VGH Management Ltd.

4.4 Side Letter to the Transaction Agreements dated 19 May 2016

4.4.1 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.

4.4.2 The Side Letter specified the Government's acknowledgment and acceptance of the receipt and contents of the following documentation:

- a the performance guarantee in accordance with the SCA;
- b a certified true copy of the register of members and directors of VGH Ltd;
- c a certified true copy of the register of members and directors of VGH Management Ltd;
- d a certified true copy of the register of members and directors of VGH Assets Ltd;
- e the resolution dated 22 March 2016, passed by all the directors of VGH Assets Ltd, approving the entry into the SCA and authorising inter alia entry into the Emphyteutical Deed;
- f the resolution dated 22 March 2016, passed by all the directors of VGH Management Ltd, approving entry into the SCA;
- g the resolution in writing dated 22 March 2016, passed by all the directors of VGH Ltd, approving entry into the SCA;
- h a certified true copy of the memorandum and articles of association of VGH Assets Ltd;
- i a certified true copy of the memorandum and articles of association of VGH Management Ltd;
- j a certified true copy of the memorandum and articles of association of VGH Ltd;
- k an undertaking of VGH Ltd that, as of the date of the Letter, none of the events which the SCA qualified as events of default or equivalent events thereto subsisted;
- l an undertaking of VGH Assets Ltd that, as of the date of the Letter, none of the events which the SCA and the Emphyteutical Deed qualified as events of default or equivalent events thereto subsisted;

- m an undertaking of VGH Management Ltd that, as of the date of the Letter, none of the events which the SCA, the HSDA and the LSA qualified as events of default or as equivalent events thereto subsisted;
- n the executed HSDA;
- o the executed Emphyteutical Deed;
- p the engagement of the EPC Contractor to perform the works to be embarked on and fulfilled by VGH Ltd and VGH Management Ltd at the SLH, the KGRH and the GGH in line with designs, redevelopment requirements, concession milestones and licences, provisions related to which were stipulated in the SCA;
- q approved additional services included as an Addendum to the HSDA; and
- r evidence that the insurances provided for in the SCA were in place.

4.4.3 According to the Side Letter, the Government, VGH Ltd, VGH Assets Ltd and VGH Management Ltd agreed to waive the condition included in the SCA which stipulated that VGH Ltd and VGH Management Ltd were to supply the Government with evidence that the primary lenders and financing agreements, approved by the Government, were in place by making available a signed copy thereof. This condition was waived on the understanding that the terms specified in the term sheet, dated 15 December 2015 and carried out by and between Allianz Global Investors GmbH, VGH Ltd, VGH Assets Ltd and VGH Management Ltd, and approved by the Government, were to be reflected in the Financing Agreements. This waiver was granted on the condition that VGH Ltd, VGH Assets Ltd and VGH Management Ltd supplied the Government with a fully executed copy of the Financing Agreements by 19 February 2017.

4.4.4 In submissions made to the NAO, the PS MOT affirmed that the Government was satisfied with the term sheet provided, which constituted a commitment to financing. The PS MOT also referred to meetings held by the VGH with Allianz Global Investors and Deutsche Bank, which confirmed their willingness to finance the project. In addition, this Office was also informed that Government sought legal counsel throughout this process. The NAO reviewed the term sheet issued by Allianz Global Investors and noted the following excerpt, "... while this letter is not a formal offer of finance, subject to the conditions herein Allianz Global Investors ... expects to be able to provide up to €170 million of 29-year fixed rate fully amortising senior secured debt to fund this transaction. The financing remains subject to satisfactory completion of our due diligence, including KYC/AML, satisfactory documentation, listing of debt instrument on the Euro MTF, and the obtaining of an investment grade credit rating of the transaction by one of Moody's, S&P or Fitch."

4.4.5 The parties to the Side Letter also confirmed that they had acquired all permissions, consents, approvals, certificates, permits, licences, agreements and authorisations necessary

for them to enter into, execute, sign, deliver and perform all their respective obligations in the Transaction Agreements and that such consents were to remain in force throughout the concession period.

4.4.6 While the SCA required the Government, VGH Ltd, VGH Assets Ltd and VGH Management Ltd to compile and finalise a handover plan for the effective date to occur, in the Side Letter, this requirement was postponed to a maximum of 30 days from the effective date.

4.4.7 Further stipulated in the Side Letter was the effective date of the concession. It was noted that given the satisfaction of the conditions indicated in paragraphs 4.4.2 and 4.4.3 of this Report, all the rights and obligations arising from the SCA were to be rendered operative as of the date of the Letter. For all intents and purposes of the SCA, the effective date was to be considered to be the date of the side letter. However, the NAO was informed by the MFH that, in its understanding, the effective date was 1 June 2016.

4.4.8 Additionally, the Side Letter stipulated a change in the value of the charges defined in the LSA. Such charges comprised the monthly basic salary and any applicable allowances and bonuses of each employee leased by the Government to VGH Management Ltd at the effective date in terms of the employee's applicable employment contract with Government, any applicable collective agreement and any other employment conditions applicable to the employee, as well as any tax and/or social security contribution due by employers in respect of the leased employees. The Side Letter specified that the value of the original estimated charges at the time of the issuance of the RfP for the redevelopment, maintenance, management, and operation of the sites, which was dated 27 March 2015, amounted to €38,000,000. This comprised €22,500,000 and €15,500,000 in respect of the employees to be deployed at the GGH and the KGRH¹⁰ on the effective date, respectively. However, as at the date of the Side Letter, the Government, VGH Ltd, VGH Assets Ltd and VGH Management Ltd had been unable to establish the precise value of such charges and agreed to discuss and reach agreement on the actual accurate charges by 15 September 2016. It was additionally agreed 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 by the Government for the provision of the services outlined in the HSDA.

4.5 Side Letter to the Transaction Agreements dated 15 September 2016

4.5.1 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 on 15 September 2016. Of note was that in this Side Letter, VGH Ltd, VGH Assets Ltd and VGH Management Ltd had computed the accurate value of the charges.

¹⁰ Projects Malta confirmed that the charges stated for the staff to be deployed at KGRH included the charges for the staff to be deployed at the SLH.

4.5.2 The parties noted in the Letter that they had established the difference between the accurate charges and the original estimated charges. This difference was comprised of:

- a charges payable in respect of the deployed employees supplied to VGH Management Ltd by the Government in terms of the LSA; and
- b charges payable to subcontractors making available HR to VGH Management Ltd for the remaining duration of the term of the applicable agreement of service/s engaging the subcontractor.

4.5.3 The Side Letter confirmed that the Government was to bear the whole difference in charges and pay this difference and any increases to it to VGH Ltd and VGH Management Ltd in terms of:

- a the prorated amount of the value indicated in Figure 12 beginning on the effective date and ending on 31 December 2016 with regard to the subcontracted resources. The Government agreed to pay this sum by 31 October 2016; and

Figure 12 | Pro-rated difference in charges

		Yearly amount (€)	Pro rata (€)
Analysis of variance for the GGH	JF Services - Cleaning	388,000	226,000
	JF Services – Care Workers	361,000	210,000
	Signal 8 Security - Clerks	583,000	340,000
	Subtotal	1,332,000	776,000
Analysis of variance for the KGRH	Support Services	585,000	341,000
	WM Environmentals	163,000	95,000
	G4S	120,000	70,000
	Subtotal	868,000	506,000
Total	2,200,000	1,282,000	

- b €6,000,000 yearly, payable in equal amounts quarterly, in respect of the Government employees supplied to VGH Management Ltd beginning on the effective date and ending on the termination of the concession period. This sum was to increase by two per cent annually.

4.5.4 Specified in the Side Letter was that the Government agreed to pay these sums without delay and by no later than 15 days from receiving a request for payment from VGH Management Ltd. It was also noted that the payment of the sums due in terms of the Side Letter were without prejudice to any other sums due and payable to VGH Ltd, VGH Assets Ltd, and VGH Healthcare Management Ltd by the Government.

4.5.5 Through the Side Letter, the Government also agreed to supply additional HR to VGH Management Ltd from the MDH, at no extra cost to VGH Ltd, VGH Assets Ltd and VGH Management Ltd, which cost was to be borne by Government. The NAO sought to establish

the cost to Government of the additional resources made available to the VGH. Queries to this effect were submitted to Projects Malta Ltd. This Office was informed that the cost to Government amounted to €2,360,000. The additional resources, 116 in all, comprised 48 full-time physiotherapists to be deployed by VGH Management Ltd at the KGRH and 68 visiting physicians to address VGH Management Ltd's requirements to be deployed at the GGH and/or the KGRH. Further details, including the grades of the additional employees to be provided, were also specified in the Side Letter. It was also noted that the additional resources were to be endorsed by VGH Management Ltd before being deployed. Furthermore, the Government was to supply and suggest additional HR that were adequate in relation to VGH Management Ltd's needs and exigencies and provide these in a timely and consistent manner in accordance with its requirements and instructions.

- 4.5.6 The requirements for the Government to supply VGH Management Ltd with the 116 additional resources and to effect the annual payments of €6,000,000 were eliminated on the execution of the Addendum to the Labour Supply Agreement dated 30 June 2017, which superseded this Side Letter.

4.6 Side Letter to the Services Concession Agreement dated 14 February 2017

- 4.6.1 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 SCA on 14 February 2017. Noted in the preambles to the Side Letter was that VGH Assets Ltd, VGH Ltd and VGH Management Ltd were in the advanced stages of closing the financing transaction and had requested the Government to extend the date by when a fully executed copy of the Financing Agreements was to be provided to 30 June 2017.

- 4.6.2 Through the Side Letter, the Government irrevocably and unconditionally waived the obligation of VGH Assets Ltd, VGH Ltd and VGH Management Ltd as set out in the Side Letter to the Transaction Agreements dated 19 May 2016 to provide a fully executed copy of the Financing Agreements by 19 February 2017, subject to the copy being provided by no later than 30 June 2017.

4.7 Further extensions for financial close

- 4.7.1 On 7 March 2017, the Minister within the OPM submitted a memorandum to Cabinet regarding the SCA, making specific reference to one of the conditions precedent of this Agreement, that is, financial close. Cited in the memorandum was the Side Letter to the Transaction Agreements dated 19 May 2016, through which the obligation of the VGH to provide the Government with a fully executed copy of the Financing Agreements was waived until 19 February 2017. Acknowledged in the memorandum was that, although financial close was reportedly at an advanced stage, it had not yet been achieved. It was in this context that the VGH sought the Government's approval to extend the date for financial close until 30 April 2017. Simultaneously noted was the possibility that the period required for financial close would extend beyond the 30 April 2017 deadline.

4.7.2 The reasons for the delay in financial close stipulated in the memorandum and the consequent request for the extended deadline were that:

- a Allianz's funding was based on Moody's Credit Rating, which in turn was based on guaranteed payments from the Government and step-in provisions in the event of a non-rectifiable default on the part of the VGH or cancellation of the contract by the Government;
- b recent changes in the methodology of EU debt assumption meant that the way the concession agreement was structured would result in the project debt being classified as Government debt;
- c the VGH had discussed with Moody's the possibility of having the rating based on project finance rather than on the underwriting element of Government step-in;
- d Moody's was redefining the rating process to determine how to rate the debt based on project finance; however, this entailed complete scrutiny of details of construction, design and operations, all of which added weeks to the initially projected timeframe. Although the long stop date had been extended until 30 April 2017, there existed the possibility of further extensions being required depending on the finalisation of the exercise that was being undertaken by Moody's; and
- e the issue of the development planning permit was also of direct relevance to the exercise that was being undertaken by Moody's, as this was critical to the project and project financing.

4.7.3 It was in light of the above considerations that 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. Cabinet approved the memorandum submitted by the Minister within the OPM that same day, that is, on 7 March 2017.

4.8 Side Letter to the Services Concession Agreement dated 23 June 2017

4.8.1 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 another Side Letter to the SCA on 23 June 2017. It was noted in the preambles of this Side Letter that VGH Assets Ltd and VGH Management Ltd had requested the Government to waive the date agreed for the provision of a fully executed copy of the Financing Agreements in the first Side Letter to the SCA, thereby extending the deadline from 30 June 2017 to at least 31 December 2017. The Government agreed to the waiver on the understanding that VGH Assets Ltd, VGH Ltd and VGH Management Ltd would provide a fully executed copy of the Financing Agreements by no later than 31 December 2017.

4.9 Addendum to the Labour Supply Agreement

4.9.1 On 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. Through the Addendum, the Government and VGH Management Ltd amended the LSA to, among others, incorporate aspects of the Side Letters to the Transaction Agreements dated 19 May 2016 and 15 September 2016 under the terms and conditions of this Agreement. The Addendum superseded the Side Letter dated 15 September 2016 provided that any payments due and payable in terms of such Letter for the period between, and including, 1 June 2016 and 31 December 2016 were deemed to have arisen and/or been validly made in terms of such Letter. Payments due included but were not limited to the augmented cost of subcontracted resources amounting to €1,305,688.

4.9.2 The list of resources, including 1,536 staff, mentioned in the LSA was included and populated concretely in the Addendum to the LSA. A high-level staff head count and categories included in this list are provided in Figure 13.

Figure 13 | Staff categories and head count included in the list of resources

Hospital	Staff Category	Head Count
GGH	Nursing	438
	Social Workers	5
	Maintenance	81
	Allied Health	104
	Management and Administration	72
	Medical	53
	Ambulance and Garage	20
	Others	44
	Shared Consultants	83
	Subtotal	900
KGRH ¹	Nursing	239
	Allied Health	117
	Pharmacy	18
	Orthotics and Prosthetic	8
	General	87
	Hospitality Service	35
	Stores	2
	Social Workers	24
	Management and Administration	69
	Consultants and Specialists	37
Subtotal	636	
Total	1,536	

Note:

1. Projects Malta Ltd confirmed that the list of staff to be deployed at the KGRH included the staff to be deployed at the SLH.

- 4.9.3 Also stated in the Addendum was that, in addition to the LSA's terms and conditions in relation to the augmentation of the list of resources, any increases to the list made by the Government were not to increase the charges payable by VGH Management Ltd to the Government.
- 4.9.4 Furthermore, the Addendum also included a new proviso to Government's obligation, included in the LSA, to supply VGH Management Ltd with an equivalent number of leased employees as indicated in the list of resources and promptly replace staff to resolve any shortfall. In the LSA, a 'shortfall' was defined as including situations wherein leased government employees accepted an offer of direct employment by VGH Management Ltd and the removal of a leased employee due to an action of and/or instruction for such removal given by VGH Management Ltd, thereby ensuring that the number of leased employees remained at the agreed amount of 1,536. The new proviso included in the Addendum stated that VGH Management Ltd could request the Government to cure any shortfall by providing a replacement employee of a different grade or designation. If VGH Management Ltd submitted such a request and the Government provided a replacement employee in this respect whose wages and/or salaries including any allowances and bonuses were higher than those payable to the employee accepting an offer of direct employment by VGH Management Ltd prior to this transfer, then the charges in respect of the leased employees' salaries paid by VGH Management Ltd to Government were to increase by such difference as from the date of transfer. It was further noted that if the Government failed to provide a replacement employee within thirty days from the request by VGH Management Ltd and the replacement worker was provided by VGH Management Ltd, the charges were to be reduced by the wages and/or salaries including any allowances and bonuses payable to the transferred employee prior to the transfer as from the lapse of thirty days.
- 4.9.5 The Addendum also amended the proviso elaborated on in paragraph 3.3.5 of this Report, that is, that in the event of an increase in the employees' wages/salaries and any other emoluments or benefits, VGH Management Ltd would only bear up to two per cent each year of the annual salary during the concession period for all employees and that the Government was to bear the additional charges in this respect, and incorporated it in a clause providing for the payment of charges. This clause is elaborated on in the following paragraph.
- 4.9.6 In the original LSA, it was noted that subject to the provision in paragraph 3.3.5 of this Report, VGH Management Ltd was to pay 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 in relation to such employees. Furthermore, the wages and/or salaries of VGH Management Ltd's members of staff engaged by it due to the Government's failure to supply a replacement employee within a reasonable time, in excess of the payment to be made by VGH Management Ltd to the Government, were to be assumed by the Government. In these cases, the Government was to pay the excess directly to VGH Management Ltd within 15 days from receipt of the relevant invoice.

4.9.7 The Addendum restated this clause, including additional detail and provisos. It was noted that as from the effective date, VGH Management Ltd was to pay the Government for the duration of the concession period annual charges capped at €32,234,637 for the employees leased by the Government to it. Such charges were to be subject to a fixed yearly two per cent increase during the concession period. The new clause further stated that the Government undertook not to charge VGH Management Ltd beyond the two per cent increase per annum. The NAO sourced information from the MFH relating to amounts charged to the VGH by Government with respect to salaries payable. Following relevant analysis, this Office established that the salary reimbursement sought by Government and effected by the VGH included the two per cent annual increase as stipulated in the LSA.

4.9.8 In submissions made by the MFH to the NAO, 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. In addition, the MFH contended that the two per cent capping in terms of payroll costs covered by the VGH was unfair. The MFH argued 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.

4.9.9 Also noted was that as of 1 January 2017, Government and VGH Management Ltd agreed that the 288 subcontracted resources listed in the Addendum, a high-level staff head count and categories of which is provided in Figure 14, were not to be regulated by the LSA. Furthermore, for as long as such subcontracted resources were engaged by VGH Management Ltd and due to the fact that such resources were engaged by it, it was VGH Management Ltd who was to effect any and all payments to the subcontracted resources. It was noted in the Addendum that the subcontracted staff cost amounted to approximately €6,000,000.

Figure 14 | Staff categories and head count included in the list of subcontracted resources

Hospital	Staff Category	Head Count
KGRH	Domestic Cleaners from WM Environmentals	60
	Carers from We Care	10
	Carer (Health Services) - FTEs	80
	Finance Manager (Provided by Contractor)	1
	Clerks from G4S	32
	Clerks from PF Services	3
	Subtotal	186
GGH	Care Workers from JF Services	30
	Clerks from Signal 8 Security	42
	Cleaners from JF Services	30
	Subtotal	102
	Total subcontracted staff	288

4.9.10 The Addendum included a further proviso stating that if the Government failed to provide VGH Management Ltd with the 1,536 employees in terms of the list of resources, the charges payable by VGH Management Ltd to the Government were to be reduced. Reductions were to be equal to the total salary and any applicable allowances, including continuous professional development allowance, and bonuses and any tax and/or social security contributions and/or national insurance due by the employer in terms of the applicable employee contract or conditions of work for every employee not being leased by the Government to VGH Management Ltd in terms of the resource list. The reduction in the charges paid was to take place from the date when Government failed to provide VGH Management Ltd with the total number of employees listed. Furthermore, with retrospective effect from the effective date, that is, 1 June 2016, any overpayments on any taxes and social security contributions were to be refunded to VGH Management Ltd and/or set off against any charges due by VGH Management Ltd to the Government within 30 days from knowledge of these by the Government.

4.9.11 This last sentence had been part of another clause in the original LSA, which was deleted through the Addendum. The Addendum also deleted the proviso stipulated in this Report's paragraph 3.3.18, which stated that the deployed employees' salaries and any applicable allowances and bonuses were to continue being charged by the Government to VGH Management Ltd during any period of such employees' absence from work for grounds allowed by law, including maternity leave, vacation leave, sick leave and any other benefit enjoyed by the employee in terms of law or the relative worker's employment contract with the Government, any applicable collective agreement and any other conditions of employment applicable to the employee. In view of the significance of this change to Government, queries regarding the rationale behind the deletion of this clause were put to the MOT, the MFH and Projects Malta Ltd. All contended that they were not involved in the negotiations that led to the Addendum and therefore could not provide any explanations in this respect.

4.9.12 The Addendum included an additional proviso stating that the portion of the charges payable by VGH Management Ltd to the Government was to be reduced to reflect:

- a any staff who were initially deployed by the Government to VGH Management Ltd but who had accepted an offer of direct employment by VGH Management Ltd and were thereby transferred to it from the Government; and/or
- b any and all staff that had been replaced by the Concessionaire due to Government failing to supply replacement employees within a reasonable time.

4.10 Addendum to the Services Concession Agreement

4.10.1 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.

As per the SCA, VGH Ltd and VGH Management Ltd were deemed as the Concessionaire and while they could share rights, duties and obligations, they were jointly and severally liable for the performance of those obligations. Through the Addendum, several terms of the SCA were revised. The most salient revisions are elaborated on in the ensuing paragraphs.

Amendment to the preambles to the Services Concession Agreement

4.10.2 In the prior version of the SCA, it had been noted that the Concessionaire was to make available to the Government the contracted number of beds, as well as other facilities and additional services at each of the sites in accordance with the HSDA. Further noted was that beds, facilities and services capacity not reserved for use by the Government could be offered by the Concessionaire to medical tourists. The Addendum clarified that it was VGH Management Ltd, not the Concessionaire who would make these available to Government and offer the remaining capacity to medical tourists. This was in line with the fact that the HSDA was entered into by VGH Management Ltd.

Amendments to definitions included within the Services Concession Agreement

4.10.3 The Addendum amended several definitions included in the SCA. A significant number of the changes involved the substitution of the term 'Concessionaire' with 'VGH Management Ltd'. The Addendum to the SCA corrected errors in the SCA arising from the fact that the Concessionaire in the SCA and the HSDA was defined differently (VGH Ltd and VGH Management Ltd in the SCA and VGH Management Ltd in the HSDA). In this respect, whereas in the SCA the responsibility for the provision of the healthcare services was placed on the Concessionaire, the Addendum to the SCA amended this to be VGH Management Ltd. Several definitions were changed in this respect:

- a 'assets', which now denoted those assets acquired by VGH Management Ltd rather than by the Concessionaire;
- b 'charges', with the charges now being payable to VGH Management Ltd and not the Concessionaire;
- c 'hand-back inspection', to be carried out jointly by the Government and VGH Management Ltd, instead of by the Government and the Concessionaire;
- d 'healthcare services', to be supplied by VGH Management Ltd rather than the Concessionaire, in line with the fact that it was the former company that had entered into the HSDA;
- e 'HSDA', now referring to the procurement of services from VGH Management Ltd instead of from the Concessionaire;

- f 'LSA', whereby the resources were to be supplied by Government to VGH Management Ltd rather than to the Concessionaire;
- g 'medical tourism', which services were now to be provided by VGH Management Ltd, not the Concessionaire;
- h 'nursing college', which was to be constructed and built by VGH Management Ltd rather than the Concessionaire;
- i 'workers', to be engaged and employed by VGH Management Ltd rather than the Concessionaire;
- j 'works', to be undertaken and completed by VGH Management Ltd rather than the Concessionaire; and
- k 'uninsurable risks', now referring to VGH Management Ltd's business rather than that of the Concessionaire.

4.10.4 The definitions of the Direct Agreement, the Emphyteutical Deed(s) and the Financing Agreement(s) were also changed through the Addendum. In the prior version of the SCA, the Direct Agreement had been defined as an agreement entered into by and between the same parties to the SCA concurrently with such Financing Agreement by not later than the effective date. Through the Addendum, this definition no longer referred to the Financing Agreement and the effective date but only mentioned that this was to be an Agreement entered into by the Concessionaire, VGH Assets Ltd, and the Government. Furthermore, whereas the SCA had considered the possibility that multiple emphyteutical deeds could be entered into, the Addendum recognised that one emphyteutical deed had been entered into. All references to the term 'Emphyteutical Deed(s)' in the SCA were to be replaced through the Addendum with the term 'Emphyteutical Deed'. In the prior version of the SCA, the Financing Agreement(s) were to be consented to by the Government and entered into by the primary lenders and the Concessionaire prior to the effective date. Through the Addendum, the Financing Agreement/s could also be entered into by VGH Assets Ltd in addition, or as a replacement, to the Concessionaire, and the reference to the effective date was removed. The definition was amended to mean the Financing Agreement/s to be consented to by the Government, by virtue of the Direct Agreement, and to be entered into by the lenders, VGH Assets Ltd and/or the Concessionaire. Furthermore, the SCA referred to the designer as Heery International Inc or a substitute appointed by the Concessionaire. The Addendum amended this definition such that the appointment of a substitute was to be made by the EPC contractor.

4.10.5 The Addendum also included newly introduced definitions for Government control step-in and step-out; however, the provisions in relation to these remained as per the relevant SCA clauses, elaborated on in this Report in paragraphs 3.1.95 to 3.1.101. A further new definition was included for Facilities Guidelines Institute (FGI) Standards, referred to as FGI standards

for healthcare design. The Addendum also extended a few definitions to include reference to VGH Assets Ltd. This was the case with the definitions of information, consents and disputes.

4.10.6 Further changes were made through the Addendum with respect to the definitions and provisions relating to lenders. The definition of primary lenders was deleted while that for lenders was amended. Whereas the SCA provided for the primary lenders appearing on the initial financing agreement with the Concessionaire approved by the Government by virtue of the Direct Agreement and any subsequent lenders of the Concessionaire, the new definition referred to the lenders and its rightful assignees of VGH Assets Ltd, VGH Management Ltd and VGH Ltd appearing on the Direct Agreement. All references to 'primary lenders' within the SCA were replaced through the Addendum to the SCA with the term 'lenders'. Furthermore, the lender's debt definition was substantially widened to mean all monies, obligations and liabilities (present or future) due, owing or payable by VGH Assets Ltd, VGH Management Ltd and VGH Ltd to the lender(s) under or in connection with the Financing Agreements. In the SCA, this definition only included the principal and interest due on current amounts to the primary lenders pursuant to the initial Financing Agreement consented to by the Government by virtue of the Direct Agreement.

Grant of the concession

4.10.7 The SCA had included provisions in relation to the effective date, that is, the date of satisfaction or waiver of several conditions precedent. On the part of the VGH, most of these conditions had related to the Concessionaire, defined in the SCA as VGH Ltd and VGH Management Ltd. Through the Addendum to the SCA, VGH Assets Ltd was also included in the conditions that had previously only related to the Concessionaire. Furthermore, one of the conditions precedent included in the SCA had specified that the Concessionaire was to provide evidence that the primary lenders financing the concession were in place and submit a signed copy of the Financing Agreements, consented to by the Government and entered into by the same primary lenders and the Concessionaire. Through the Addendum to the SCA, this was changed to the requirement by the Concessionaire and VGH Assets Ltd to provide the Government with evidence that the financing was in place by providing an executed copy of the financing term sheet and drafts of the Direct Agreement and the Financing Agreements.

Emphyteutical grant of the sites

4.10.8 The SCA provided for the Emphyteutical Deed to be entered into as of the effective date. The Addendum removed the reference to this date and also, in relation to the companies using the sites, amended the term 'Concessionaire' to VGH Management Ltd.

Medical college

4.10.9 The SCA had stipulated that the Concessionaire was responsible for the design and execution of works in relation to the medical college and had provided several requirements to be

observed in this respect. It had also been noted that the cost to procure and install equipment, listed in the Agreement in relation to the requirements of QMUL Malta, was to be borne by the Concessionaire. The Addendum to the SCA further added that the Concessionaire was also to bear the cost to procure and install the equipment listed in additional schedules to the Agreement. QMUL Malta was to bear the cost of the equipment included in a schedule attached to the Addendum, while the Concessionaire was to bear the cost of installation of such equipment. The installation of any of the equipment at the medical college was also to be in line with a scope of works document for structured cable installation attached to the Addendum. It was further stipulated that any liability, cost or expense arising by reason of any change to the scope of works agreed by the parties to the Agreement was to be borne exclusively by the Government unless otherwise agreed in writing. Additionally provided was that the Concessionaire was to develop the medical college in terms of a development specifications schedule attached to the Addendum, which provided a description of the educational area, unless otherwise agreed in writing by and between the Concessionaire and the Government.

- 4.10.10 Furthermore, in the original SCA, the Government and the Concessionaire were to enter into all necessary agreements on issuance of the relevant Services Commencement Certificate in relation to the medical college. This clause was amended such that it was VGH Assets Ltd and VGH Management Ltd who were to enter into the necessary agreements and not the Concessionaire.

Non-corporeal assets

- 4.10.11 The SCA had noted that the parties were to, in accordance with the applicable law, procure by novation or assignment the substitution by the Concessionaire on Government agreements with third parties that were currently in force regarding the Government's operation of the sites. A proviso had been included noting that if the parties failed to procure the substitution by the effective date, within ten days from this date, the Concessionaire was to enter into negotiations with the third party appearing on the contracts in respect of which the substitution remained outstanding to agree on an arrangement satisfactory to the parties. Through the Addendum to the SCA, the reference to the time period within which the Concessionaire was to enter into such negotiations, that is, the ten days subsequent to the effective date, was removed.

Obligations of Government

- 4.10.12 Several amendments were made to the list of obligations, included in the SCA, that the Government was to comply with. Through the Addendum, the handover was to be effected to VGH Management Ltd instead of to the Concessionaire. Regarding the securing of vacant possession of the sites in accordance with the Emphyteutical Deed, the vacation of the Malta Enterprise property within 24 months from the effective date was amended to 24 months from the date of entry into the Emphyteutical Deed. The obligation of Government

to not permit burdens and encumbrances over the sites and on the Concessionaire's rights was amended to also refer to VGH Assets Ltd. Moreover, a new obligation was introduced, whereby the Government was to bear any and all liabilities, costs and expenses relating to any changes or diversions from the RfP issued by the Government in respect of the concession and the Government was to keep VGH Assets Ltd and the Concessionaire indemnified in respect thereof at all times.

Procurement of licences and permits

4.10.13 In the SCA, it had been noted that 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 no 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 within 36 months, the Concessionaire was to be automatically granted a further extension of 18 months.

Execution of works

4.10.14 The SCA had provided that the works had to be carried out in accordance with the following industry standards, laws and regulations: best industry practice, the applicable laws and in compliance with Eurocodes, Health Building Notes, Health Technical Memoranda, other European standards for building and construction and in accordance with the licences. Through the Addendum to the SCA, the applicable industry standards with respect to which the works were to be carried out were amended to: good industry practice, applicable laws and in compliance with FGI standards for building and construction, and in accordance with the licences.

Operation and maintenance

4.10.15 The Addendum to the SCA allowed for the fact that the Concessionaire could procure the preparation of the repair and maintenance manual instead of preparing it itself. Furthermore, the Concessionaire could also procure the modification of this same manual in accordance with the MMB's comments.

Insurance

4.10.16 Through the Addendum to the SCA, the disclosure obligations outlined in paragraphs 3.1.75 and 3.1.77 of this report were applicable to the Concessionaire and the Government instead of all parties, thereby excluding VGH Assets Ltd.

Human resources management

4.10.17 Regarding HR management, the Addendum to the SCA did not note that the LSA was to be entered into concurrently with the SCA and only mentioned VGH Management Ltd rather than the Concessionaire in matters related thereto.

Hand-back process

4.10.18 Through the Addendum to the SCA it was clarified that the hand-back procedure on termination related to early termination. Furthermore, in the clauses related to the hand-back on the lapse of the concession period, it was noted that the Government was to, aside from notifying the Concessionaire, also notify VGH Assets Ltd in order to retain the option to request the reversion of title to the KGRH and the GGH. The title would be transferred from VGH Assets Ltd, rather than the Concessionaire, to the Government, and the €80,000,000 consideration payable by the Government in this respect would be paid to VGH Assets Ltd and not the Concessionaire.

Termination payments

4.10.19 The SCA provided for termination payments and the regulation of such payments. The Addendum to the SCA introduced a new proviso stating that any compensation paid by the Government to the Concessionaire in accordance with the Agreement less the portion thereof, if any, allocable to the lenders' debt (termed the 'concessionaire compensation amount'), would solely be paid either:

- a concurrently with the portion allocable to the lenders' debt, which portion would be paid in full and unconditionally by the Government to the lender; or
- b following the unconditional and full payment of the portion allocable to the lenders' debt, in a way that the concessionaire compensation amount is applied by or on behalf of the lender to satisfy any amounts outstanding in respect of lenders' debt.

4.10.20 It was further provided that if the 'concessionaire compensation amount' was applied by or on behalf of the lender to satisfy any amounts outstanding in respect of lenders' debt, the Government undertook to pay to the Concessionaire, promptly on demand, an amount equal to the amount of the concessionaire compensation amount applied by the lender.

4.11 Third Addendum to Health Services Delivery Agreement

4.11.1 The Government, represented by the Minister for Tourism, and VGH Management Ltd, represented by Ram Tumuluri, entered into a third Addendum to the HSDA on 30 June 2017. Through this Addendum, changes were made to amend the first Addendum to the HSDA, entered into on 7 December 2015, which related to the supply of an additional number

of beds to supplement the minimum agreed in the HSDA. Through this Addendum, it was agreed to extend the date of provision of these additional beds from 1 January 2018 to not later than 1 January 2020.

4.12 On delayed authorisations and the transfer of the concession

4.12.1 The reason for the extension granted with respect to the Side Letter to the SCA, dated 23 June 2017, and the third Addendum to the HSDA, dated 30 June 2017, was provided to Cabinet following the entry into these agreements. While these agreements were entered into by the Minister for Tourism in June 2017, Cabinet’s authorisation was sought weeks later. Authorisation was in effect requested on 11 July 2017, through a memorandum presented by the Minister for Tourism.

4.12.2 Cited in this memorandum was the SCA entered into on 30 November 2015 and the Side Letter to the Transaction Agreements dated 19 May 2016, whereby the VGH undertook to provide the Government with a fully executed copy of the Financing Agreements by 19 February 2017. Following a request from the VGH, the deadline for the submission of the Financing Agreements was extended to 30 June 2017. According to the memorandum submitted by the Minister for Tourism, circumstances beyond the control of the VGH, most notable of which was the early election, rendered it impossible for the VGH and its financiers to achieve financial close. It was in this context that the VGH requested the Government to extend the date for financial close to 31 December 2017.

4.12.3 Also cited in the memorandum was the HSDA entered into on 30 November 2015 and the first Addendum to the HSDA, dated 7 December 2015, wherein the VGH undertook to provide the Government with additional beds over and above the Minimum Beds Service and Guarantee as from 1 January 2018. Noted in the memorandum was that due to unforeseen delays in the issuance of planning permits, construction had been delayed. In this respect, the VGH requested an extension of the date for the provision of the additional beds, now proposed as 1 January 2020.

4.12.4 Another matter raised in the memorandum related to the direct and collateral agreements intended to guarantee take-up of the lender’s debt in the event of a VGH default. The Minister for Tourism noted that these agreements were in the process of being finalised as part of the VGH’s financial close. The direct and collateral agreements contemplated the simultaneous exercise by Government of its step-in rights in terms of the concession agreement. Reported in the memorandum to Cabinet was that, “Recent discussions have centred around the Sovereign Wealth Fund in the context of a bankable arrangement whereby the guarantee on the debt would be provided, where, by way of an interim measure, the latter take on lender’s debt prior to Government step in.”

4.12.5 It was in this respect that the Minister for Tourism sought Cabinet’s authorisation to ratify the extension to the deadline set for financial close – the Side Letter to the SCA had already been

entered into, effectively extending the deadline – and to approve the extension of the date by which the additional beds were to be provided – the third Addendum to the HSDA had already been entered into, endorsing the VGH’s request to delay delivery of the additional beds. Furthermore, the Minister for Tourism recommended that Government proceed with entering into an agreement with the VGH and the Sovereign Fund as proposed in paragraph 4.12.4. It was acknowledged that this would be an interim arrangement that would be replaced by direct and collateral agreements approved in advance by Cabinet. Despite the request made to Cabinet, the NAO established that, following queries raised with the PS MOT, no interim agreement was reached or discussed.

4.12.6 Noted in the minutes corresponding to the meeting of Cabinet held on 11 July 2017 was that the Minister for Tourism had put forward the above cited memorandum and had explained the circumstances that led to the current situation in terms of the concession awarded to the VGH. Also stated was that the Minister for Tourism had explained numerous scenarios and the reasons behind the recommendations put to Cabinet. In turn, Cabinet discussed the memorandum at length and approved it.

4.12.7 Following the series of addenda entered into towards the end of June 2017 and authorised by Cabinet thereafter, the next notable development identified by the NAO with respect to concession’s contractual framework was a minute corresponding to a Cabinet meeting held on 19 December 2017. Recorded in this regard was that the Prime Minister had informed Cabinet of the possibility of positive developments in relation to the concession.

4.12.8 More definite developments were disclosed to Cabinet in the meeting dated 9 January 2018. These developments were triggered by a memorandum submitted to Cabinet by the Minister for Tourism, also dated 9 January 2018. An element of context was provided in the memorandum through reference to the SCA and the HSDA. Specific reference was made to clauses 15.1 and 35, respectively, which stipulated that for a period of three years from the completion date, the VGH could not allow the transfer of its shares or those of its subsidiaries without the express prior written consent of the Government.

4.12.9 Further context was provided in that, on 27 December 2017, the Government received a request from the VGH seeking Government’s consent for the sale of the entire issued share capital of VGH Ltd to Steward Healthcare International Ltd. Noted was that, based on the information provided by the VGH, Government’s approval of the proposed transaction would lead to a change of control of the VGH. Cited in the memorandum put forward by the Minister for Tourism was that following the careful consideration of the matter and given that the proposed transaction was time sensitive, the Government had granted its consent on 29 December 2017. Through this consent, Government allowed for the eventual transfer of shares held by Bluestone Investments Malta Ltd in VGH Ltd to Steward Healthcare International Ltd.

- 4.12.10 In addition, in the memorandum dated 9 January 2018, the Minister for Tourism again referred to the obligation of the VGH to provide the Government with a fully executed copy of the Financing Agreements by the effective date, which occurred on 19 May 2016. This obligation was waived several times, with the latest extension afforded by Cabinet setting a deadline for submission by 31 December 2017. The Minister for Tourism referred to the ongoing share transfer negotiations between the VGH and Steward, which negotiations necessitated a further extension in the deadline for financial close. The proposed revised deadline was the earlier of 5 March 2018 or one month following the expiry of the conditional share sale and purchase agreement.
- 4.12.11 It was in this context that Cabinet was requested to ratify the extension for financial close and 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.
- 4.12.12 Reverting to the Cabinet meeting of 9 January 2018, cited in an excerpt of minutes of this meeting was that the Prime Minister and the Minister for Tourism discussed the memorandum that had been submitted by the latter, elaborating on the points raised in the preceding paragraphs. Noted was that the Prime Minister introduced the subject matter addressed in the memorandum urgently brought to the attention of Cabinet and provided an explanation as to what led to the decision regarding the transfer to Steward. In turn, the Minister for Tourism delved into the details that emanated from the memorandum and clarified concerns that arose during the discussion on the subject matter. Ultimately, Cabinet approved the memorandum as proposed.
- 4.12.13 The matter came to an end on 19 February 2018. According to the minutes of a Cabinet meeting reviewed by the NAO, the Prime Minister informed Cabinet that the transfer of the shares of the VGH had been concluded.

Chapter 5 | Safeguarding Government's interests through the contractual framework

5.1 Comparison of the contractual framework with the requirements of the Request for Proposals

5.1.1 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.

5.1.2 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.

5.1.3 The MFH acknowledged the relevance of this analysis in a meeting held with this Office. It was in this context that the MFH Advisor highlighted the various significant deviations of the contracts from that stipulated in the RfP, commenting that these deviations should have been discussed and documented at the negotiation stage.

Comparison of the Services Concession Agreement and the Request for Proposals

5.1.4 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 in the comparison of the SCA and the RfP 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.

- 5.1.5 Regarding the investment risk, the RfP indicated that the Government was not to offer the concessionaire any guarantee that it would recoup any investment or costs incurred in the concession period and that the operational risk of the provision of the services under the concession was to lie with the concessionaire. However, 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. In the case of the VGH defaulting, the Government had an obligation to pay the debt in full, without deducting any costs relating to retendering or remediation, thereby minimising the risk for the VGH. Additionally, while the HSDA stipulated that the VGH was to bear all costs and expenses relating to the Agreement, the NAO is of the understanding that the provision for the annual minimum healthcare delivery fee could be considered as a form of revenue guarantee. The minimum healthcare delivery fee provided the VGH with security of revenue, with payments being made by Government irrespective of whether the minimum beds allocated to it were occupied or not. This Office is of the opinion that potential bidders were to be informed of these provisions at the RfP stage, since they bore impact on the extent of operational risk that was to be borne by the concessionaire, the financial feasibility of the project and the guaranteed revenue for the concessionaire. Moreover, this Office is of the opinion that these guarantees were not consistent with the issuance of the RfP as a concession, which point is elaborated on in paragraph 7.1.3. The NAO recognises that the RfP stated that a fixed amount was to be payable monthly in arrears for services rendered; however, in this Office's opinion, this provision offered less clarity and assurance than the minimum healthcare delivery fee provisions included in the HSDA. On the other hand, the Negotiation Committee affirmed that the RfP and the HSDA provisions were consistent and argued that considering the labour, financing, construction and depreciation costs involved, it was imperative for the Government to provide security of revenue for beds it expected to find available at its disposal. The Committee further explained that the provision relating to the lender's debt termination payment was a standard clause to guarantee project financing for any private finance initiative. Moreover, they noted that in the event of default and termination of the contract, had this provision not been introduced, it would have allowed a situation where the VGH could seek to sell the asset to the Government at a higher price. Consequently, this provision was considered by the Committee to protect the Government's interests. Similarly, in a meeting with the NAO, the PS MOT indicated that guaranteed revenue and termination payments were necessary to make the project bankable.
- 5.1.6 Notwithstanding these provisions, the PS MOT argued that there was an adequate balance of risk between the parties, as despite the guaranteed annual income of approximately €70,000,000, the project would only be rendered feasible through the generation of medical tourism and the gain of various operational efficiencies. The difficulty encountered by the VGH to obtain financing, and later developments, namely, Steward Health Care's requests for increased payments and the lengthy negotiations with Steward, were considered by the PS MOT as evidence of the existing risk incurred by the Concessionaire in this project. The Negotiation Committee noted that the balance of risk was in favour of the Government, particularly when considering the concession's operational, construction and marketing

risks, and the fact that the project was only financially viable as long as the medical tourism component was successful. The Committee added that without the medical tourism component, the project wasn't viable, and in fact, the VGH had registered significant losses and was close to insolvency when solely generating Government-sourced revenue.

5.1.7 In contrast, regarding the balance of risk, the MFH were of the opinion that a hybrid payment system, with fixed bed rental charges and variable fees for staff and services according to use, would have provided for more balanced risks and rewards. When queried by the NAO as to whether MFIN was satisfied with the balance of risk allocated to the VGH and the Government through this concession, the PS MFIN asserted that in the case of PPP projects, the Ministry always advised against, and insisted on the need to avoid, having the balance of risks weighed against Government. The PS MFIN added that should this not be achieved, the risks that all expenditure related to such projects be rerouted to the Government balance sheet increased substantially. Moreover, the PS MFIN asserted that the Ministry would never favour such risks and their unsatisfactory fiscal outcomes.

5.1.8 The RfP and the Emphyteutical Deed provided the possibility of extending the emphyteutical title over specific areas of the sites for a further period of 69 years. The RfP stated that the Government could consider granting to the concessionaire the option to acquire the temporary emphyteusis over certain areas of the sites for a further period of not more than 69 years following the lapse of the concession period. The Emphyteutical Deed specified that on the termination of the 30-year term, the emphyteutical grant could be extended at the sole discretion of the VGH for a single additional term of 69 years. However, the Government had the right to reverse the title for the KGRH and the GGH, therefore only permitting the extension for the SLH. In contrast, the SCA did not mention the possibility of an extension of 69 years. Indicated in the Agreement was that on the termination of the original 30 year-term, the contract terminated ipso jure. It is in this context that the NAO notes with concern 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, thereby presenting an anomaly in the contractual framework. The NAO is also cognisant that the SCA provided that, on the lapse of the concession period, Government could request the reversion of title for the KGRH and the GGH from the VGH for a consideration of €80,000,000. It is this Office's understanding that this SCA provision tacitly suggested a possible extension of the emphyteutical term for these sites. Notwithstanding this, the RfP had failed to indicate that the concessionaire would be compensated for any reversion of title by the Government at the end of the 30-year concession term. The NAO is of the opinion that this information 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.

5.1.9 The NAO sought the views of the PS MOT regarding the inconsistency in terms between the SCA, which corresponded to a period of 30 years, and the emphyteutical title granted with respect to the SLH, for a period of 30 years extendable by an additional 69 years. The PS MOT

informed this Office that Government wanted to be able to revert the GGH and the KGRH to itself following the 30-year term; however, Government allowed for the Concessionaire to continue to operate the SLH site for medical tourism.

- 5.1.10 In a meeting held with the NAO, the Minister for Health confirmed that stated by the PS MOT. While reiterating that he was not party to the negotiations and contract drafting and therefore was not in any way involved in setting these terms, the Minister for Health explained that on becoming aware of this discrepancy between the two contracts he had enquired with the Minister for Tourism as to whether this inconsistency was due to an unintentional omission in the SCA. The legal counsel to the Minister for Tourism, who was directly involved in the negotiation process, explained to him that this discrepancy in contracts was intentional, with Government seeking to retain the prerogative to take back control of the KGRH and the GGH at the end of the original term, while guaranteeing the Concessionaire the right to retain the SLH for a further 69 years for the purpose of providing medical tourism. The Minister for Health argued that this provision was of economic benefit for the country.
- 5.1.11 In a meeting with the NAO, the MFH representatives noted that they were unaware of this deviation in the contracts. They raised the concern 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. The Negotiation Committee were of the understanding that there was no inconsistency in the contracts, since the purpose of the SCA and the Emphyteutical Deed were distinct in nature. The Committee indicated that, on the lapse of the 30-year concession agreement, the Government had retained the right to take over the KGRH and the GGH; however, would allow the VGH, should it choose to, to use the SLH for medical tourism purposes. In this respect, the Committee argued that there was no scope for an extension to the SCA, but an extension of the title over the sites, through the Emphyteutical Deed, would be required. For the KGRH and the GGH, the SCA and the Emphyteutical Deed would terminate on the same date should Government decide to take back these sites. The Committee added that, should an extension to the SCA be required, then that would be negotiated at the time between the parties.
- 5.1.12 The explanations put forward by the Negotiation Committee, the PS MOT and the Minister for Health regarding the inclusion of the period of extension in the Emphyteutical Deed and its exclusion in the SCA provide an element of understanding in terms of 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.

5.1.13 Substantial deviations were also noted with respect to the stipulated timeframes for the completion of works. With respect to the GGH, the RfP stipulated July 2016, January 2017 and December 2017 as the dates of completion of the medical college, the completion of the new wing and the renovation of the existing facilities, respectively. On the other hand, the SCA stipulated July 2017, May 2018 and September 2018 for these milestones, respectively. Therefore, when compared to the RfP, the completion dates for the GGH were postponed in the SCA. With respect to the SLH and the KGRH, the RfP stipulated that the 80-bed rehabilitation centre at the SLH and the renovation of the existing structure and the additional developments at the KGRH were to be completed within 12 months and six months from the signing of the Transaction Agreements, respectively. These same provisions were included in the SCA. However, the concession milestones included in the SCA deviated from these timeframes, specifying 1 January 2017 and 30 September 2017 for the provision of 50 additional beds at the KGRH and 80 rehabilitation beds at the SLH, respectively. This anomaly constituted an inconsistency within the SCA. Moreover, the amendment relating to dates of the concession milestones effected through the Addendum to the SCA (paragraph 4.10.13) further postponed the deadlines for the VGH. These are significant deviations since such extensions have material implications on the operational feasibility of the project. Additionally, the SCA included the completion of the SLH tourism beds by 31 December 2018 as a milestone, while the RfP was silent in this respect.

5.1.14 The PS MOT indicated to the NAO that the changes in milestones were attributable to valid reasons, mostly related to delays in the issuance of development permits. According to the PS MOT, the delays were brought to the attention of the Minister for Tourism and the Steering Committee. In further submissions to the NAO, the PS MOT explained that the concession milestones established in the RfP were based on the assumption that a short development notification order (DNO) permitting process would ensue. However, post-RfP, the applicant was constrained to pursue a full development application process. Moreover, the PS MOT noted that squatters, issues relating to expropriation and schemed roads identified once the project was in progress, made the concession milestones as set in the RfP unachievable. The PS MOT contended that, consequently, the concession milestone dates were updated to reflect a more realistic timeframe that would enable the Government to resolve title and possession issues and the VGH to obtain the full development permit. Similarly, the Negotiation Committee noted that the original deadlines were unreachable due to the lengthier development permit process, and other site issues. Consistently with that stated by the PS MOT, the Negotiation Committee asserted that, to their knowledge, this change would have been discussed at Steering Committee level and approved by Cabinet.

5.1.15 Some discrepancies were noted between the RfP and the contracts, including the SCA, with respect to the starting points for the applicability of concession responsibilities, that is, when the agreements were to become operative. The RfP stipulated that the operation and management responsibility of the sites was to immediately shift onto the concessionaire on signing of the SCA. On the other hand, the SCA stipulated that all rights and obligations arising from the Agreement were to be operative from the effective date, following the achievement

of the conditions precedent. The effective date was distinct from the date of the signing of the agreements; yet, the SCA did allow for the waiving of the conditions precedent, by mutual agreement in writing, which waiver would allow for the operation of the sites to initiate prior to the fulfilment of all conditions precedent. The side letter to the Transaction Agreements dated 19 May 2016 indicated that the effective date was reached, following waivers effected to certain conditions precedent, and therefore from this date onwards the operation and management of the sites became the responsibility of the VGH. 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 significantly impacted the operational feasibility and profitability of the project in its early years.

5.1.16 With respect to the operator of the nursing university-level institution at the SLH, the RfP stipulated that the concessionaire was to build and equip the premises, and after due consideration with Government, attract a technically competent operator to run the nursing college. On the other hand, the SCA stipulated that the VGH was to equip, design, construct and operate the nursing college at the SLH. The SCA provided for the possibility to source the operation of the nursing college, subject to consultation with Government prior to the appointment of the third-party operator. Therefore, 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 the profitability of the project. The NAO is of the opinion that this was a significant variation.

5.1.17 A major discrepancy noted related to the required improvements throughout the concession period, including the redevelopment of the sites and procurement of necessary equipment, improvements and changes of a capital nature of the sites, and investment in the healthcare facilities. 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 RfP stipulated that at the end of the concession period, Government was to grant the concessionaire compensation for those improvements that had a useful life extending beyond the term of the concession and that were approved as refundable improvements. The RfP indicated that a mechanism was to be established for determining the nature of the improvements, as either refundable or non-refundable, and in the case of refundable improvements, to determine the extent of the compensation payable at the end of the concession period. As part of their financial bid, bidders were asked to estimate the compensation payments by the Government for refundable improvements made. Despite clear provisions for these compensation payments being specified at the RfP stage, no provisions to this effect were included in the SCA. The exclusion of these provisions was deemed to constitute a notable variation.

- 5.1.18 The NAO noted that, instead, the SCA provided that on the lapse of the concession period, the Government could request the reversion of the title to the KGRH and the GGH from the VGH for a consideration of €80,000,000. In a meeting with the NAO, the PS MOT explained that this sum represented the net book value of the assets at the end of that year. Therefore, the value of the improvements with useful life beyond the concession term was determined a priori in the contracts, rather than determined through a mechanism at the end of the concession term. In further submissions, the PS MOT noted that in the VGH bid, the net book value amounted to €71,000,000; however, during negotiations of the concession agreements, the VGH conceded to ensure technology refresh on a regular basis, with Government responsible to oversee that investments were made from the twenty-sixth year onwards through the HMC. In this respect, the PS MOT noted that Government was to ensure that the net book value was maintained during the last four years of the thirty-year term.
- 5.1.19 Similarly, the Negotiation Committee explained that they had decided to indicate a fixed sum to avoid possible disputes on the determination of refundable assets, with the established sum being an estimate of the net book value of the assets at the GGH and the KGRH at the end of the concession period. Furthermore, the Negotiation Committee indicated that the KPIs, the technology watch and the Health Quality Assurance Committee would ensure that the concessionaire maintains and reinvests in the property throughout the concession. Additionally, the Negotiation Committee argued that considering that Government could terminate the contract and take over all three sites for a default value of €100,000,000, Government could negotiate a better value for the GGH and the KGRH to allow the concessionaire to retain the medical tourism business at the SLH. In further submissions to the NAO, the Negotiation Committee argued that the introduction of the €80,000,000 payment by Government to the VGH at the end of the concession period strengthened Government's position, as it had effectively fixed the consideration payable. In this context, the Negotiation Committee argued that while the consideration payable was fixed, the contractual agreement committed the VGH to maintain the hospitals in pristine condition by way of best practice KPIs as well as rigorous maintenance obligations. In justifying this stance, the Negotiation Committee also referred to the time value of money, with the €80,000,000 set in present terms having a significantly lower real value when payment would be effected.
- 5.1.20 Of note to the NAO was that, in its bid for the RfP, 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 pertinent to note that, at the RfP stage, there was no indication that the extension of the SLH was at the sole discretion of the concessionaire, and therefore the estimated concession payments were to be effected solely for the KGRH and the GGH. It was 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. In a meeting with the NAO, the Advisor MFH explained that there ought to be a structure and accounting mechanism in place to monitor and ensure that at the end of the concession period Government obtained €80,000,000 in assets, in terms of buildings and medical equipment.

- 5.1.21 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. The NAO is of the opinion that this omission was a serious weakness in the contractual framework. This omission was captured by the MFH in its registry of risks associated with the concession. Specified in this regard by the MFH was that the concession agreement failed to include the required capital expenditure that was to be made by the VGH. Cited by the MFH in its registry of risks was that the expected capital expenditure was to be of at least €220,000,000, which amount was understood by the NAO as sourced from the Contract Works, Third Party Liability and Delay in Start-up insurance policy (further details regarding insurance are presented in section 6.1 of this report). In further submissions to the NAO, the MFH explained the provenance of the €220,000,000 investment as emerging in exchanges between the parties.
- 5.1.22 Some discrepancies were noted with respect to the required performance guarantees outlined in the RfP and the SCA. The RfP specified that the concessionaire was expected to deliver an unconditional and irrevocable on demand prime bank guarantee of €9,000,000 in favour of the Government to secure the due and punctual performance of all its obligations under the concession agreement. This guarantee was to remain in force for one year after the expiry of the concession agreement. Additionally, the RfP also stipulated that the Government could request the issuance of another performance guarantee in its favour to secure the due and punctual performance of all the obligations of the concessionaire under the healthcare delivery agreement. On the other hand, the SCA included the requirement of a performance guarantee with the same terms specified in the RfP to secure the due and punctual performance of all its obligations under the same Agreement, which guarantee was to be kept in force until the completion date and for a period of 90 days thereafter. Additionally, following the completion date, the Concessionaire was to procure a new performance guarantee for €9,000,000 in security of the obligations under the Transaction Agreements. Therefore, while the RfP provided for two concurrent performance guarantees to cover the concession and the service delivery aspects separately, 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. The actual contractual provisions included in the SCA in this respect provided less security to Government. 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.

- 5.1.23 The specifications of the validity period of the performance guarantee varied between the RfP and the SCA. The RfP indicated that the performance guarantee was to be retained for one year after the concession period. On the other hand, the SCA indicated that any outstanding balance on the performance guarantee or the new performance guarantee (which was to come into effect following the completion date and replace the original performance guarantee) was to be returned thirty days after the termination of the Transaction Agreements, whatever the reason for termination. It was assumed that the settlement of the remaining balance in effect represented the end of the retention period for the performance guarantee. The implication of the shortening of the period following the termination of the agreements, from one year to thirty days, and the change from the release on expiry of the concession period to the release on the termination (for whatever reason) reduced the security provided to Government through the performance guarantee. This was considered by the NAO as constituting a material variation.
- 5.1.24 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. However, the SCA indicated that the bank was to be acceptable to Government and provided Government with the right to request a change in bank if it deemed the chosen one no longer reputable. 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.
- 5.1.25 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 VGH 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.
- 5.1.26 The NAO noted an element of variation with respect to the provisions relating to the building and fitting out of the medical school at the GGH. While the RfP and the SCA stipulated that the concessionaire was to construct and outfit a medical school at the GGH, the Addendum to the SCA introduced a list of equipment for which QMUL Malta was to bear the cost of procurement and the VGH, as the Concessionaire, was to bear the cost of installation. This

list comprised furniture items within offices and teaching spaces, medical and teaching equipment, kitchen facilities and specialised equipment for the mortuary and anatomy lab, among others. The Addendum therefore introduced a material change from the RfP, by transferring the cost for the procurement of certain items to QMUL Malta, with evident implications for the financing requirements and profitability of the project.

- 5.1.27 While the RfP indicated that the title for the structure of the medical college was to be granted to the operator of the college, the SCA indicated that Government was to be granted a title of lease over the medical college, while VGH Assets Ltd was to retain its title granted in virtue of the Emphyteutical Deed. The NAO noted that while the SCA provision was a clear deviation from that indicated in the RfP in terms of the specified recipient of the transfer, this deviation simply changed the structure of the transactions (concessionaire to operator in RfP and Concessionaire to Government and presumably Government to operator in the SCA). Additionally, while the RfP generally mentioned a transaction of the title, the SCA clearly indicated that the transfer was to be effected as a lease. The NAO is of the understanding that these deviations did not bear impact on the revenue receivable by the Concessionaire. It was in this respect that this Office considered these deviations as acceptable.
- 5.1.28 In terms of the timeframe for the development of the nursing university-level institution at the SLH, different information was provided in the RfP and the SCA. While the SCA did not specify when works relating to the nursing institution were to start, it provided a timeframe for its completion – 48 months from the effective date. The RfP, on the other hand, indicated that works were to start following the vacation of the site, but did not provide a deadline or timeline for the completion of works. Therefore, the details provided vary. The NAO is of the opinion that it would have been beneficial for potential bidders to be provided with further details of the operational timeframes in the RfP to enable better planning.
- 5.1.29 The RfP and the SCA indicated that the nursing institution at the SLH was to accommodate a minimum of 100 students. In contrast to the SCA, the RfP failed to mention that the course was to be of a three-year duration. The NAO is of the opinion that potential bidders were to be provided with this basic information regarding the course structure at the RfP stage. Notwithstanding this, the NAO acknowledges that this omission was not likely to have impacted the bids submitted or the willingness of potential bidders to submit a bid. In this respect, this deviation is considered insignificant.
- 5.1.30 Regarding licences required for the purpose of the concession, deviations between the RfP and the SCA were noted in provisions relating to the parties involved in applying for and securing these licences as well as concessions for the commencement of operations. The RfP merely stated that prior to entering into the concession, the selected bidder was required to secure the grant of the necessary licences. However, in a subsequent clarification to the RfP dated 2 April 2015 relating to the sourcing of MEPA permits, potential bidders were notified that Projects Malta Ltd was to initiate the process for the attainment of the requisite permits and that it would continue to facilitate the process until the point of execution of the concession agreement. Nevertheless, in reply to a bidder request for clarification regarding

whether Government would assist in the issuance of the relative permits and visas to facilitate medical tourism and permits for the employment of extra staff required, potential bidders were informed that all applications would be processed by the competent authorities within the parameters defined in the relevant legislation. On the other hand, the SCA indicated Government's intention to assist the VGH with obtaining any necessary licences. Similarly, while the SCA indicated that Government was to provide the VGH support and assistance to obtain entry visa and employment and residence permits, the RfP was silent on the matter. Therefore, it was noted that the RfP failed to specify that Government intended to offer assistance in this respect. While this was not considered a material deviation, the NAO is of the opinion that it would have been useful for potential bidders to have the knowledge that they were to be afforded such assistance. Additionally, the SCA provided the possibility for the VGH to take over operations from the commencement date and operate under the conditions with which Government operated until it obtained its own medical licence. This provision allowed for immediate operation and avoided delays in the start of operations, thereby bearing impact on the feasibility of the project at its early stages and the project implementation plan, and allowing revenue for the VGH from the commencement date. The NAO is of the opinion that potential bidders should have been informed of this provision at the RfP stage.

5.1.31 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. These provisions comprised the timeframes for the handover plan and the submission of designs for the purpose of completing development works, termination and hand-back procedures and applicable payments, and the requirement of a parent company guarantee. Similarly, details relating to the requirements for manuals and procedures for the planning and monitoring of maintenance, the replacement of equipment, technology watch and the provision of audited financial statements to Government were not included in the RfP.

5.1.32 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 the preparation for the bid submission. These included provisions relating to insurance requirements and the implications of instances of rectifiable and non-rectifiable non-compliance of obligations.

Comparison of the Health Services Delivery Agreement and the Request for Proposals

5.1.33 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.

Beds

- 5.1.34 As outlined in paragraph 3.2.12, 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 HSDA quoted a total of 350 beds for required services by 2017, broken down as 125 acute, 25 day care and 200 long-term beds. On the other hand, the HSDA stipulated a total of 300 beds for the minimum beds service and guarantee, subdivided as 125 acute and 175 geriatric beds. The number of beds stipulated in the HSDA as the minimum beds service and guarantee was consistent with that indicated in the RfP, even though the RfP specified 125 acute and 175 long-term and rehabilitation care (rather than geriatric) beds. When queried by the NAO regarding this discrepancy, the MFH indicated that a strict definition of what constitutes a long-term bed and an acute bed was never established in the contract. Additionally, the MFH provided a breakdown of beds by speciality as per their interpretation of the contract – which total 375 beds. This interpretation is yet another variation on the bed requirements stipulated in the HSDA. The NAO noted that through the first Addendum to the HSDA, dated 7 December 2015 (reported in further detail in section 4.1), the minimum beds service and guarantee was increased by another 50 beds, resulting in a total of 350 beds, which is equivalent to the required services by 2017 stipulated in the original HSDA. However, this Office noted differences in the classification of the additional 50 beds: 25 acute and 25 geriatric beds in the Addendum as opposed to 25 day care and 25 long-term beds in the original contract.
- 5.1.35 In submissions to the NAO, the CEO GGH stated that she was unaware of these discrepancies in bed capacity, while the MFH representatives acknowledged the inconsistencies in capacity and noted that the matter was addressed in later developments, with the contracting parties agreeing to the revised numbers through subsequent contracts entered into. Elaborating on the matter, the PS MOT explained that while the MFH, understood by this Office as reference to the CEO GGH and the CEO KGRH, was responsible for drafting certain parts of the contract, during the contract negotiation stage, the VGH had been willing to accept the numbers specified in the RfP, and therefore other parts of the HSDA tallied with this document. The Negotiation Committee similarly explained that the technical documents included within the HSDA were prepared by key officials within the MFH, again understood as reference to the CEO GGH and the CEO KGRH. The bed capacity to be contracted was being discussed by the parties and was still changing at the stage when the SCA and the HSDA were being finalised. The draft contracts, finalised towards the end of September/beginning of October 2015, catered for the number of beds as specified in the RfP.
- 5.1.36 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. The RfP indicated that a long-term geriatric care centre with a capacity of 150 beds and a rehabilitation centre with a capacity of 50 beds was to be provided at the GGH. Similar information was included in the SCA. On the other hand, the HSDA stipulated that the GGH was to include a long-term geriatric care and a rehabilitation centre with a total capacity of 200 beds, with 175

and 25 beds required for local use within each of these facilities, respectively. The 175 beds for local use at the long-term geriatric care centre specified in the HSDA was inconsistent with the specification of a 150-bed capacity for this centre included in the RfP and the SCA. When requested to clarify this inconsistency, the MFH referred to the breakdown of beds by speciality as per their interpretation of the contract. Specified in this breakdown were 150 long-term geriatric beds, and 25 beds for rehabilitation. The MFH's interpretation for the long-term geriatric beds was consistent with the SCA specifications. 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.

5.1.37 For the KGRH, the minimum number of beds specified in the HSDA and the RfP was 320 and 300 beds, respectively. The minimum number of beds specified in the HSDA for the KGRH therefore 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. In submissions to the NAO, the Negotiation Committee argued that since the RfP stipulated a minimum of 300 beds and the VGH had proposed 320 beds in its bid, the HSDA specified the number of beds adjudicated by the RfP Evaluation Committee. Notwithstanding the explanation provided by the Negotiation Committee, this deviation was considered material by the NAO since it bore impact on the revenue levels and profitability of the project.

5.1.38 Moreover, as outlined above, through the first Addendum the minimum number of beds was increased by a further 25 acute beds and 25 geriatric care beds at the GGH, as well as 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 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.

5.1.39 In reply to queries raised by the NAO, the Negotiation Committee maintained that these additional beds were requested by the MFH; however, the specific persons making such requests could not be recalled, although reference was made to the possible involvement of the CEO GGH, the CEO KGRH and the Consultant MFH in this respect. The Committee also noted that the RfP provided for additional beds for an extra fixed fee, and that although it was understood at that point in time that the MFH required more beds, the exact requirements had not yet been determined. The PS MOT asserted that he was not involved in any discussions or authorisations relating to the additional beds; however, he suggested that Government's needs could have evolved and since the charges were favourable to Government, as reflected in the cost benchmarking exercise with the MDH, additional requirements were contracted

following discussions with stakeholders. Despite that stated by the Committee and the PS MOT, the NAO's concerns in this regard persist.

- 5.1.40 The RfP and the HSDA clearly indicated that the Concessionaire was to always be able to satisfy the minimum demands of Government in terms of the quantity of beds. However, the HSDA more explicitly stated that any beds that were allocated to the Government but were not occupied were to remain vacant and not be utilised for medical tourism purposes, a provision that was not expressly included in the RfP. Similarly, while the HSDA clearly stipulated that the minimum service delivery fee was to be paid even if the beds were not occupied, the RfP stated that a fixed amount was to be payable to the concessionaire for services rendered. Following queries raised by a bidder as to whether the Government would pay compensation for the minimum number of beds requested irrespective of their occupancy, Projects Malta Ltd informed potential bidders that in line with the RfP, the Government was committed to take up these beds. This represented a confirmation that the Government would provide the concessionaire with a guaranteed income for the duration of the concession period. Regardless, the NAO is of the opinion that, for the avoidance of doubt, both provisions ought to have been explicitly included in the RfP.
- 5.1.41 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 the fees that were to be charged to the Government for additional beds were less than the fees charged to the private market. Moreover, this had operational implications in terms of security of availability for the private market beds, with implications on any potential agreements with the private sector.

Fees payable

- 5.1.42 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. During the transition period, the Concessionaire was to maintain the level of beds and services as at the effective date. The HSDA stipulated the fees payable to the VGH during this transition period, which fees were distinct from the fees payable post completion date.
- 5.1.43 In this respect, the Negotiation Committee argued that there was no need for the RfP to specifically mention and outline the details relating to the operation and payments during the transition period, and that mentioning that the concessionaire was to take over on the signing of the agreements was sufficient. Additionally, the Committee indicated that the nature of a

request for proposals, as opposed to a tender, allowed for greater flexibility and discretion to bidders to propose suitable solutions to achieve the outputs required. In this case, the VGH had proposed payment amounts for the first few years of the concession covering the period prior to the completion of the construction works and the fulfilment of the additional bed requirements. Notwithstanding the explanation provided by the Committee, 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.

5.1.44 Regarding the periodicity and timing of the concession fees, a discrepancy was noted between the RfP and the HSDA (as updated through the Second Addendum). The RfP merely stated that the compensation was to be paid monthly in arrears. The Addendum to the HSDA, dated 7 December 2015, provided for payments for the transition period between the effective date and the completion date to be effected in advance every three months, with the first payment payable within five days from the effective date. This represented a substantial deviation from that stipulated in the RfP and in the original Agreement, which indicated monthly payments in arrears for the whole duration of the concession period. The MFH acknowledged this discrepancy in the risk register compiled with respect to the concession and advocated for payment to be made in arrears. During a meeting with the NAO, the MFH explained that this change was effected independent of the Ministry, but that thereafter it was responsible to effect payments in line with the change. The MFH representatives were of the understanding that this change was effected because of issues relating to cash flow faced by the VGH. In reply to queries raised by this Office, the PS MOT explained that in preliminary discussions with the financing institutions, this change was identified as a key requirement to enable the VGH to have in place the appropriate solvency ratios required to finance the project. Consequently, the change was deemed conducive to the attainment of Government's objective to finalise the project. In effect, this change provided the VGH with cash flow in advance for a quarter during the transition period. 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.

5.1.45 Differences were also noted between the RfP and the HSDA with respect to the provision of annual increases in the concession fee payable by the Government to the concessionaire for services rendered. The RfP stipulated that the concession fee was to be adjusted upwards in line with the cost of living, whereas the HSDA specified that fees were to be revised upwards by two per cent per annum or in line with the Consumer Price Index, whichever was the highest. For those years when the cost-of-living increase was less than two per cent, the HSDA provision would guarantee a two per cent increase, and therefore a higher revenue than the provision included in the RfP (an increase equivalent to the cost-of-living increase). The NAO is of the opinion that this was a material deviation from the RfP, with implications on the guaranteed revenue, financial feasibility and profitability of the project. Of note is the

fact that data relating to the Actual Harmonised Indices of Consumer Prices for the period 2015-2020¹¹ indicates that, since 2015, the yearly index value was consistently below two per cent.

Services and facilities

- 5.1.46 Besides discrepancies related to the number of beds, as outlined above, 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. Similarly, the RfP did not provide the same level of information as the HSDA in terms of what was included in the minimum charge for services rendered. 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 seen through.
- 5.1.47 During a meeting with the NAO, the Negotiation Committee asserted that it was not involved in the determination or negotiation of the technical health aspects of the contracts, and that the MFH was responsible for these elements. In this respect, the CEO KGRH and the CEO GGH, who were members of the technical work stream, noted that they provided information requested to them and gave recommendations. In providing the requested information, the CEO KGRH and the CEO GGH often had sought input from other persons who worked in different area specialities, thereby explaining the differing level of detail included in the HSDA for different services. Similarly, in submissions to the NAO, the MFH officials argued that the inconsistent level of detail was evidence of the unstructured clinical input sourced from different experts in the field. Furthermore, the CEO KGRH and CEO GGH affirmed that they had never endorsed or requested authorisation to include specific provisions in the contract, and that they were unaware of the contents of the contracts at that point. The CEO GGH further asserted that she was unaware that the information she was providing was required for the purpose of a concession. Elaborating on her involvement, the CEO GGH could not recall whether the requests for information came from the Committee or the MFH, but explained that, either way, the other party would be in copy. Also stated by the CEO GGH was that the PS MFH and other officials from this Ministry were in copy in these exchanges. The CEO GGH also referred to an OPM official who was copied in correspondence exchanged;

¹¹ https://ec.europa.eu/eurostat/databrowser/view/prc_hicp_aind/default/table?lang=en

however, these exchanges related to the Barts Medical School. On the other hand, the CEO KGRH explained that he was only contacted by the MFH. In turn, the PS MOT asserted that such changes were the result of discussions between the MFH and stakeholders.

5.1.48 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. For example, for certain services, such as the number of surgical hours, the HSDA introduced a capping quantifier. Service utilisation above this capping was therefore a source of additional income for the VGH. Similarly, the HSDA provided for the separate billing and payment of additional services previously referred from the GGH to the MDH or abroad, over and above the minimum services fee, subject to additional negotiated financial packages. Other omissions related to parking facilities and imaging tests. The RfP indicated that the concessionaire was to make available parking facilities at the GGH, but in contrast to the HSDA, it did not specify that these facilities were also to be made available at the other sites. Additionally, no reference to the possibility of charging commercial rates for parking was included in the RfP for any of the sites, despite this provision being included in the HSDA. With respect to the GGH, the RfP made no mention of the fact that MRI services would only be included in the minimum charge as from 2023 and that other imaging investigations, which at the time of the call were referred to the MDH, would be billed separately.

5.1.49 Other examples of missing information relating to the service and facility requirements were noted, which omissions had implications on service levels and costs. Whereas the RfP included full details of the auxiliary services required at the GGH, the auxiliary services required at the KGRH and the SLH, including a blood bank, patients' relatives visiting area and staff cafeteria, were not included in the RfP. Similarly, while the RfP included reference to the laboratory and imaging diagnostic test requirements and mortuary service requirements for the GGH, it did not list these requirements for the KGRH and the SLH. This inconsistency in levels of detail was rectified in the HSDA, which included specifications corresponding to the GGH, the KGRH and the SLH. Additionally, the HSDA stipulated that the VGH was expected to carry out public health campaigns in consultation with the Government for the improvement of public health in Malta, and bear any costs incurred in this respect. The RfP did not mention the need to undertake public health campaigns. These campaigns come at an additional cost and burden for the concessionaire, and consequently, the NAO is of the opinion that potential bidders were to be informed of this requirement.

5.1.50 Another omission related to the provision for variation in service levels throughout the concession term. The HSDA stipulated that for the first year after the completion date of the GGH, provision was to be made for a 10 per cent upward variation of quoted figures to be included in the minimum health services delivery fee, excluding the number of beds. Thereafter, every additional three years, these services were to increase by five per cent in numbers without any further incremental cost to the Government. The RfP made no mention of the 10 per cent variation for the first year and five per cent variation for each subsequent

three-year period. The NAO acknowledges that this change was in favour of Government. These variations bore an impact on the concessionaire's costs and profitability (since they came at no extra cost to Government) as well as the operational logistics of the project (because of the increased service levels). It is in this respect that the NAO is of the opinion that potential bidders ought to have been informed of these provisions at the RfP stage.

- 5.1.51 Various inconsistencies between the RfP and the HSDA with respect to service and facility requirements, as well as inclusions in the minimum charge represent, in the NAO's opinion, significant shortcomings and evidence of lack of planning prior to the call for submissions. For example, urology services, haematology services, neurology services and nuclear medicine were mentioned in the HSDA as services to be offered from the GGH but were missing in the RfP. It remained unclear to the NAO whether these services were being captured under more general specialisations, such as general medicine, in the RfP. However, this Office is of the opinion that these requirements ought to have been individually mentioned for the sake of clarity and transparency. In certain cases, services included in the HSDA were not mentioned in the list of intended services but included in the description of current services in the RfP. These include nephrology services, paediatric services and a hyperbaric unit within the GGH. To the extent that the concessionaire was meant to continue providing existing services, then it may be argued that there was no inconsistency between the RfP and the HSDA. However, the NAO is of the opinion that, for reasons of clarity and transparency, the list of envisaged service offering ought to have been exhaustive in the RfP.
- 5.1.52 The RfP and the SCA stipulated that the GGH was to support 50,000 outpatients annually. The number of outpatients supported yearly was to increase at an annual rate of five per cent. The HSDA indicated that activity was to remain fairly constant at the GGH, with the hospital capable of supporting the outpatient activities output serviced at the GGH in 2014, specified as 90,000 visits. To the extent that the 50,000 outpatients equate to 90,000 outpatient visits, this inconsistency was deemed immaterial by the NAO; however, for planning purposes, using the number of outpatient visits as a unit of information may have provided a better level of detail at the RfP stage.
- 5.1.53 Some discrepancies between that stated in the RfP and that stated in the HSDA related to the minimum charge. For example, the RfP indicated that the minimum charge was to include the cost of pharmaceuticals and medical supplies for services offered from the sites at the time, whereas the HSDA limited this cost to basic pharmaceuticals and medical accessories, and capped it at the projected total cost. The qualification of pharmaceuticals and medical accessories as basic and the stipulation of a capping had a direct bearing on the costs of the project, and therefore its financial feasibility. It was unclear to the NAO why inflation increases were not applied in the case of pharmaceutical and medical supplies for subsequent years of the concession period, as is the case for the bed fees. Additionally, the HSDA provided for basic pharmaceutical and medical accessories to start being charged only from the beginning of 2018. The RfP was silent in this respect, and therefore it is only logical to assume that the RfP intended for these costs to be covered by the concessionaire as from the start of the

concession period. This change represented an additional cost to Government, and in the NAO's opinion, potential bidders were to be informed of this delay in the application of this cost. Similarly, the OPU was also a separate line item, with a budget of €1,400,000. Since the contracts failed to specifically indicate that the VGH was to incur the costs related to this facility, the MFH agreed to pay this during post-contract negotiations.

5.1.54 Regarding the applicability of pharmaceutical and medical accessory costs as from 2018, the PS MOT indicated that while he was not privy to these details, to the best of his knowledge, the VGH expected to take on the expenses included in the Government budgets for the hospitals, understood by the NAO as referring to the transition phase. Since the pharmaceuticals were included as a separate line item, the VGH expected this expense to be refunded to them by the Government. This understanding was shared by the Negotiation Committee. In reply to further queries submitted, the PS MOT explained that the RfP had requested bidders to include the cost of pharmaceuticals and medical accessories for current services in their fee, which fee was applicable as from 2018, when the sites were to be completed. The PS MFH and the Advisor MFH explained that since the contracts stipulated that the Government was to sustain the services and provision of supplies which fell outside the scope of the respective hospital budgets, the Government was therefore obligated to provide pharmaceuticals and medical supplies at its expense. It remained unclear to the NAO whether this provision was to apply only during the transition period or throughout the entire concession period. Regarding the introduction of a capping, the Committee argued that this was essential to establish a baseline, since Government's formulary changed constantly, and for the same range of services the products offered and the applicable cost could differ substantially year on year.

5.1.55 Additionally, while the RfP stipulated that additional costs relating to pharmaceuticals and medical supplies were to be compensated in accordance with a formulary (or equivalent) established by the Government, the HSDA did not specify how prices relating to pharmaceuticals and medical supplies not covered in the minimum charge were to be determined. In the risk register compiled by the MFH intended to analyse the salient clauses of the agreements, the Ministry flagged this HSDA provision as an issue of concern, commenting that it should have been formalised. The NAO deemed the observation made by the MFH as valid and is of the opinion that, for reasons of transparency and value for money, the HSDA ought to have specified that extra payments were to be made in accordance with a specific formulary. Another example related to staff meals. While the HSDA mentioned staff meals as a key inclusion in the minimum charge, the RfP made no mention of the need for the concessionaire to provide such meals. However, the RfP did refer to the need to have a cafeteria area for the staff within the GGH, though no mention of this requirement for the KGRH and the SLH was included. This additional requirement implied substantial cost and additional operational commitment for the concessionaire.

5.1.56 It was noted that in certain instances the RfP distinguished between the KGRH and the SLH specifications, while the HSDA did not. For example, whereas in the RfP a prosthetics centre was indicated for the SLH, the HSDA specified an OPU to be housed in the SLH/KGRH. While

the NAO is cognisant that the KGRH is situated within the SLH site, this Office is of the opinion that the HSDA ought to have clearly specified where the OPU was to be located. This assumes relevance when considering that the SLH was the only site where the Concessionaire was guaranteed an extension of the lease for an additional 69 years. In submissions to this Office, the Consultant MFH indicated that, at present, all services were offered at the KGRH. However, the Consultant MFH was of the understanding that there were plans for services to be transferred to the refurbished SLH, and the KGRH demolished and rebuilt for alternative use. Following queries raised by the NAO to this effect, the PS MOT explained that at the end of the thirty-year period, all health services would be effectively terminated, while in the case of the facilities, the Government had a right to take over the facilities located at the KGRH and the GGH. Moreover, the PS MOT noted that the Government had complete control on the approval and authorisation of the final designs of the facilities at all hospitals, and therefore the plans would clearly outline the entire range of facilities that would be made available in each hospital. Government endorsement in this respect would be required. Similarly, the Negotiation Committee noted that the HCC, which Committee was established through the SCA, had the exclusive right to authorise and approve the design of the hospitals. It was further indicated that the HSDA stipulated the services that were to be offered from specific sites, and not the facilities to be developed. The CEO KGRH indicated that the majority of operations were related to the KGRH, with the rest being general security and transport services for the whole campus. Aside from the delineation of the sites, it remained unclear whether the original reference to prosthetics in the RfP included orthotics by association, or whether the inclusion of orthotics in the HSDA was a deviation from the RfP.

5.1.57 Also noted was the fact that the HSDA included more details regarding the required services and facilities than the RfP. For example, the HSDA included details of the basic design specifications, such as the type of wards and the number of beds to be set up within each ward, details of the facilities to be included in specific buildings, such as the inclusion of a rehabilitation flatlet, gym, snoezelen room and activities of daily living facilities within the KGRH, and details of specific services to be offered from specific facilities, such as the type of rehabilitation services and allied health professionals to be operating from the KGRH and the SLH, which were missing in the RfP. Similarly, while the RfP merely mentioned that the SLH should include a holistic healthcare centre incorporating oriental medicine, the HSDA provided details of the scope of services, the ailments to be treated, HR requirements, working hours, and medical and other equipment. Another example related to the dermatology centre within the SLH. The RfP solely indicated that the SLH should include a dermatology centre, but the HSDA included details of the set-up and design requirements, building and engineering services and operational service principles of this centre. These additional details were essential for adequate operational planning and robust financial planning.

Other provisions

5.1.58 Various other omissions were noted in the RfP. The HSDA provided details of reporting requirements sought from the VGH, relating to KPIs, annual reports and customer satisfaction

surveys, which were not included in the RfP. Since these requirements implied effort, time and resources, it is this Office’s opinion that an overview of these requirements should have been included in the RfP. The HSDA introduced 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. Since these were mandatory requirements, which had logistical and cost implications, the NAO is of the opinion that potential bidders ought to have been informed of these at the RfP stage. Similarly, the HSDA included provisions about key roles, including certain positions such as that of the CEO, the chief financial officer and the HR director, among many others, which were to be filled at all times. The HSDA also included detailed provisions for the evidence-based assessment of additional staff requirements (other than the resources deployed from Government) in terms of quantity and skills mix. On the other hand, the RfP solely indicated that the concessionaire would engage its own HR. In the NAO’s opinion, the inclusion of these details at the RfP stage would have provided potential bidders with a better understanding of the additional staff requirements and allowed for better planning of staffing costs.

5.1.59 In certain cases, details included in the RfP were not included in the HSDA. In the case of the medical school on the GGH campus, the RfP included details of the student timetable, while the HSDA did not provide any details in this respect. The NAO noted that in the case of the specifications for the data management system, the details included in the RfP exceeded those included in the HSDA. Although the KPI relating to the IT and Hospital Management System included in the HSDA was consistent with that specified in the RfP, the details provided in the HSDA with respect to the system’s specifications fell short of that indicated at the RfP stage. For example, the RfP specified that the system should include electronic medical and health records and industry-leading interoperability, offer continuous and uninterrupted availability of information and process flow across various healthcare functions, interface with Government health systems, and have the capability to be modular, expandable and adaptable in a timely manner. These details were not included in the HSDA, which merely specified that the VGH was to digitalise patient records and provide better synchronisation of patients’ critical data across the nation. In the NAO’s opinion, the Agreement ought to have included more details than the RfP, and not the other way round.

5.1.60 Provisions relating to the use of the SLH as a teaching hospital were included in the RfP but were missing in the HSDA. The RfP stipulated that, in the case of the SLH, the concessionaire was required to make available the necessary facilities for a nursing university-level institution within the same site, while providing the required access for the faculty and students to the medical facilities for their practical training. In the case of the medical college at the GGH, details regarding access to clinical placements were included in the HSDA. In contrast, no such provisions were included in the HSDA for the nursing college at the SLH. 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.

Comparison of the Labour Supply Agreement and the Request for Proposals

- 5.1.61 The NAO also carried out a comparison of the LSA and its Addendum to the RfP. Notable deviations resulted, including those relating to the financial elements of the Agreement, future salaries, employment and working conditions, training and number of staff.
- 5.1.62 Regarding fees payable for the deployment of public sector employees as resources for the concession period, the Addendum to the LSA stated that as from the effective date, the VGH was to pay Government an annual fee capped at €32,234,637 for the resources, which charges were subject to a fixed two per cent annual increase for the duration of the concession period. The RfP provided no indication of the total value of the fee relating to the resources. However, during the site inspection visits, potential bidders were provided with existing staff costs totalling €39,700,000, presented separately for the Dermatology Unit, the GGH and the KGRH and standing at €1,700,000, €22,500,000 and €15,500,000, respectively. In the NAO's opinion, the total salary cost payable with respect to the deployed public sector employees was an important element of information that should have been included in the RfP, as it was to inevitably have a direct bearing on the financing and running costs of the project, and consequently its commercial viability, and was essential for the purpose of financial planning. The NAO also noted the discrepancy in the total cost cited in the Addendum to the LSA and in the documentation provided at the RfP stage, with Government effectively forfeiting approximately €7,500,000 in staff costs when one compares that stated at the RfP stage with the contract entered into. 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. Further details in this regard are presented in section 6.4 of this report.
- 5.1.63 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. The RfP simply stated that the Government would continue to exercise collective bargaining in consultation with the concessionaire. This led the Office to the understanding that the VGH was to bear the costs for any increases in salaries over the course of the concession period. On the other hand, the Addendum to the LSA stated that as from the effective date and for the duration of the concession, the VGH would pay Government an annual fee capped at €32,234,637 for the resources, subject to a yearly fixed two per cent increase for the duration of the concession period. The Addendum to the LSA specifically stipulated that Government was not to charge the Concessionaire beyond this two per cent annual increase. Therefore, 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, and in so stating rendered the role of the VGH in any future collective bargaining redundant. Consequently, the lack of details regarding future collective bargaining in the LSA was rendered a matter of limited importance considering the fixed increases in salary specified in the Addendum to the LSA. The more serious deviation noted by the NAO in this respect was the introduction of a capping on future increases in salaries which were to be covered by the VGH, which this Office considered a material deviation from the RfP. 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.

5.1.64 The Advisor MFH indicated that the capping of two per cent on future increases in salaries, which only took into account inflation, was inconsistent with the provision for further increases in fees to be paid to the VGH to reflect increases in healthcare budgets. Providing a different perspective on the matter, the PS MOT noted that a capping on future increases was necessary to eliminate the possibility of sharp increases in salaries motivated by factors beyond the concession, for example, political reasons, and that this capping was likely agreed by both parties during negotiations. Moreover, the PS MOT affirmed that yearly increases in wages in public service collective agreements were generally in the range of 2 to 2.5 per cent.

5.1.65 Certain provisions included in the LSA were not addressed in the RfP. One such provision related to the possibility of making changes to working conditions to allow the VGH flexibility to deploy resources. The LSA specifically stated that Government, with the assistance of the VGH, was committed to use reasonable endeavours to liaise, discuss and negotiate revisions in work practices, job descriptions and shift patterns, with the resources and their representatives and trade unions, with a view to accommodating the reasonable requests of the Concessionaire in this regard. No mention of this possibility was included in the RfP. Possible revisions in work practices, job descriptions and shift patterns could have a significant impact on the operational feasibility of the project with respect to staff management. In this respect, the NAO is of the opinion that these conditions should have been included in the RfP.

5.1.66 The LSA stated that the VGH was to reimburse Government for any expenses it incurred when obtaining employment licences for the resources at rates mutually agreed on. The RfP did not include any specifications in this regard.

5.1.67 In addition, the LSA included a provision that stated that the VGH was to train each of the resources to a level of competence and standard as may be required for the performance of the duties to be assigned, at no additional expense to the Government. The only reference to training in the RfP related to the KGRH, with associate engagement through robust selection and training programmes and the alignment of compensation with performance included as one of the service specifications for the site. No other details relating to training costs were

included in the RfP. The scope of training mentioned in the LSA was much wider than that included in the RfP, in that it related to all sites and was not limited to associates. Clearly stated in the LSA was that training costs for all resources were to be borne by the VGH. Considering that the resources were to remain employees of the Government, the NAO is of the opinion that the training requirement for all employees and the specification that the concessionaire was to bear such costs should have been included in the RfP for the avoidance of doubt. This is particularly relevant since training represents a substantial additional cost for the Concessionaire.

5.1.68 With regard to the procedure for payment of charges relating to the resources, the LSA stated that Government was to invoice the VGH the charges in arrears every 15 days and the Concessionaire was to pay any given invoice within 15 days of receipt. On the other hand, the RfP did not include any information regarding the frequency and timing of the fee payable to the Government in relation to the resources. The NAO is of the opinion that this information should have been included in the RfP since it had a direct bearing on the cash flow of the project.

5.1.69 The NAO also compared that stated in the LSA and RfP with respect to the conditions of employment of the resources. The LSA stated that the conditions of service of the deployed resources were to be those applicable to them as public officers and public servants, and that their conditions were to include increases in wages payable to all public employees thereafter and arising statutorily or by virtue of a collective agreement. On the other hand, while the RfP acknowledged that resources were to remain public service employees and that Government was to continue to exercise collective bargaining in consultation with the concessionaire, it did not specifically mention that the conditions of employment for the resources were to remain those applicable to public officers. While conditions of employment for public service employees may be understood to be those applicable to public officers, the NAO is of the opinion that this ought to have been expressly specified in the RfP for the avoidance of any doubt.

5.1.70 The number of staff indicated to be assigned to each site varied between the RfP and the LSA. The RfP specified a staff complement of 781 employees at the GGH, 701 at the KGRH and 58 at the Dermatology Unit. On the other hand, the Addendum to the LSA, dated 30 June 2017, specified 900 employees at the GGH and 636 at the KGRH, with none indicated for the Dermatology Unit. Though the staff numbers for individual sites varied between the RfP and the Addendum to the LSA, the total number is practically equal, with the RfP having a total staff count of 1,540 and the Addendum to the LSA a total of 1,536. To the extent that staff recruitment and retention was not more problematic in any particular site, then this deviation was considered acceptable by the NAO. Moreover, it is acknowledged that the RfP stipulated that the workforce list it included was correct at the time of publication of the RfP and that it could change on the date of signing of the concession agreement.

5.1.71 Also considered were the costs to be borne by the Concessionaire for the staff deployed. The RfP clearly stated that Government would charge the concessionaire a fee incorporating the

salaries, allowances, and all other benefits incurred by it in relation to the resources. While the original LSA did indicate that the fee payable for staff wages covered any basic salary, applicable allowances and bonuses, this was replaced in the Addendum to the LSA through a clause that specified a total amount payable for the resources, an annual €32,234,637 subject to a fixed yearly two per cent increase for the duration of the concession period. The Addendum to the LSA did not provide a breakdown of this amount. However, the Addendum referred to charges as defined in the original LSA. Moreover, in provisions relating to refunds for resource shortages, the Addendum to the LSA referred to the breakdown of charges, mentioning wages, allowances, bonuses, tax, social security contributions and national insurance. It was therefore assumed that the total amount payable for resources covers basic wages, applicable allowances and bonuses. In this respect, the NAO is of the understanding that the substance of the LSA was consistent with that specified in the RfP. However, no calculations for the total amount stipulated in the Addendum was provided, and therefore, this Office was unable to conclusively confirm whether this amount covers in full the basic salary, applicable allowances and bonuses.

Comparison of the Emphyteutical Deed and the Request for Proposals

- 5.1.72 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.
- 5.1.73 With regard to possible extensions of the temporary emphyteutical term, the RfP stated that the Government could consider granting to the concessionaire an option to acquire the temporary emphyteutical title over certain specific areas of the sites for a further period of not more than 69 years following the lapse of the concession period. While the RfP mentioned the extension as a possibility, granted at the discretion of the Government, the Emphyteutical Deed stipulated extension as being at the discretion of the VGH. More specifically, stipulated in the Deed was that on the termination of the 30-year term, the emphyteutical grant could be extended at the sole discretion of the VGH for a single additional term of 69 years. However, Government had the right to reverse the title for the KGRH and the GGH, therefore permitting only the extension for the SLH. The NAO noted that, at the RfP stage, potential bidders were not provided with security regarding the longer term. 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. However, the Deed did not allow for the VGH to determine whether to extend the title solely for the SLH, as the Concessionaire could only request an extension for all the sites.

- 5.1.74 In submissions to the NAO, the Negotiation Committee argued that the VGH's bid was based on the premise that the title for the SLH would be awarded for 99 years, that is, the original term and the extended term. The Committee contended that, had Government not granted the possibility of this extension, then the VGH would likely have had to raise its fees for the project to be profitable. In addition, the Committee argued that since the RfP entertained the possibility of an extension in term, then the VGH's proposal was in line with the RfP. In further submissions to this Office, the Committee referred to the fact that the RfP had specifically included a provision requesting potential bidders to address the matter of a potential extension in their bids to allow for the successful conclusion of negotiations on this point.
- 5.1.75 Notwithstanding that stated by the Negotiation Committee, in the NAO's understanding, this extension impinged on the financial feasibility and profitability of the project, with the guarantee of another 69-year term for the SLH 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.
- 5.1.76 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, equivalent to €309,188, €59,062 and €156,750, respectively. Though the area of the sites was specified in the Deed, this was not disaggregated for built-up and non-built-up areas. As noted in paragraph 6.5.9 of this report, the NAO directed queries to the MIP Ltd and the Lands Authority in this respect. The latter provided an estimate of the footprint of the built-up areas based on Land Registry base maps and orthophotos; however, substantial differences were noted when comparing the calculation of the applicable ground rents using the areas provided by the Lands Authority to the contracted annual ground rents. This Office is of the opinion that the total ground rent payable (or the size of the built-up areas) ought to have been specified in the RfP to provide better clarity on the applicable costs and therefore allow for more accurate financial projections.
- 5.1.77 Deviations were also noted with respect to provisions regulating the extended period of 69 years. With respect to the ground rent payable during this period, a clarification issued at the RfP stage stipulated a ground rent payable of €11.65 per square metre of built-up area. On the other hand, the Emphyteutical Deed stipulated an increase of 30 per cent on the total ground rent payable on the commencement of the extended term. According to the Emphyteutical Deed, an upward revision of the ground rate was to occur every five years thereafter at the rate of five per cent on the ground rent payable immediately prior to the date of revision. Therefore, in contrast to the Emphyteutical Deed, the RfP did not identify any applicable increases throughout the extended term. Failure to specify such increases in the RfP cannot be said to have contributed to less competitive tension during the tender process, as in effect the operational costs were higher than those indicated in the RfP and not the other way round. However, the NAO is of the opinion that in the interest of transparency,

this information should have been outlined in the RfP, as such disclosure would have allowed for more accurate financial planning. With respect to the terms and conditions applicable during the extended period, the Emphyteutical Deed stipulated that other than the revised ground rent, the same terms and conditions of the original term would remain in full force and effect. The RfP did not provide any details in this respect. This divergence is deemed immaterial by the NAO since, in the absence of any specifications stating otherwise, it was reasonable to assume that the original terms and conditions would apply to the extended term.

5.1.78 Another discrepancy was noted with respect to allowed encumbrances on or over the sites. The Emphyteutical Deed provided the VGH the possibility to create encumbrances over and on the sites in favour of the primary lenders by the creation of security interests and/or hypothecary guarantees, as well as to create a future encumbrance or burden in security for and/or to guarantee an investment and/or a transaction required to fulfil the development requirements or to benefit the healthcare sector. Additionally, the Emphyteutical Deed stipulated that the Government was to acknowledge and accept such encumbrances. On the other hand, the RfP failed to mention any specific instances of allowed encumbrances, and Government's obligation to recognise and accept such encumbrances. The RfP merely stated that the concessionaire was not to sell, alienate, encumber or otherwise dispose of the sites without the prior written consent of the Government. The requirement for the Government's prior written authorisation was consistent with that stipulated in the Emphyteutical Deed. 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. Of note is the fact that following enquiries made by the NAO as to whether the sites could be used as a security by the VGH to obtain the required financing and overdraft financing, the PS MFH replied in the affirmative, noting that this was consistent with legislation regulating emphyteusis.

5.1.79 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. The first discrepancy related to the starting point for determining the timeframe within which vacant possession was to be granted. While the RfP referred to the date of the signing of the SCA, in the Emphyteutical Deed the starting point was specified as the effective date, which date was based on the fulfilment or waiver of certain conditions precedent elaborated on in paragraph 3.1.10 of this report. Additionally, details relating to the number of occupied areas as well as the duration allowed for vacant possession varied between these two documents. The RfP stipulated that, within the SLH, there was an area occupied by Malta Enterprise that was to remain occupied for two years after the signing of the SCA, while all other occupants within the SLH were to relocate within nine months from the signing of the SCA. The Emphyteutical Deed, besides providing for the relocation of Malta Enterprise at the SLH within two years from the effective date, referred to an additional four occupants, namely the Blood Bank, the Child Development Assessment Unit, the Detox Centre and the administration building within the GGH. The timeframes for vacation specified in relation to these occupants were

five years, two years, 12 months and 12 months from the effective date, respectively. These timeframes significantly exceeded the nine-month period provided in the RfP for all other occupied areas. 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.

- 5.1.80 Another discrepancy relating to the occupied areas within the sites was a provision allowing for possible extensions included in the Emphyteutical Deed but missing from the RfP. In this respect, the Deed provided for the possibility of granting extensions to the time limits at the sole discretion of the Concessionaire. The NAO considered this omission from the RfP immaterial given the fact that such extensions were to be granted at the sole discretion of the Concessionaire.
- 5.1.81 Another provision included in the Emphyteutical Deed but missing from the RfP related to the reservation of a special legal privilege in warranty of the emphyteutical obligations of the Concessionaire. The Emphyteutical Deed stipulated that a special legal privilege, for the value of €525,000, was being reserved in warranty of the faithful performance and observance of all the conditions of the Deed, unless postponed in favour of the primary lenders. The NAO is of the opinion that this provision should have been included in the RfP since it had a direct bearing on the financing required for the project.
- 5.1.82 The site areas specified in the RfP varied from those quoted in the Emphyteutical Deed. The RfP stipulated an area of 72,974 square metres for the GGH, whereas the Deed quoted 72,881 square metres. With respect to the SLH and the KGRH, the RfP specified a joint area of 61,526 square metres, revised to 62,450 square metres in the site drawing included in the clarification dated 2 April 2015, while the Emphyteutical Deed quoted separate areas of 54,728 and 7,683 square metres, respectively, which areas jointly amounted to 62,411 square metres. The slight variation in site areas is considered acceptable by the NAO.
- 5.1.83 The Emphyteutical Deed provided the VGH the possibility of imposing all development and maintenance obligations to a competent third party subject to Government approval. In view of the fact that this possibility afforded the Concessionaire the liberty to transfer some of its obligations onto others, potentially positively impacting the operational feasibility and timescale of the project, the NAO is of the opinion that this provision should have been included in the RfP.
- 5.1.84 Regarding the periodicity and timing of ground rent payments, the Emphyteutical Deed specified that the ground rent was to be paid annually in arrears, while the RfP simply stated that the ground rent was to be paid annually. Conventionally, ground rent is paid in advance, and this provision, which deviated from usual practice, was deemed advantageous to the

VGH. Therefore, the NAO is of the opinion that the provision for payment in arrears should have been included in the RfP since it affected the cash flow of potential bidders.

5.1.85 The Emphyteutical Deed stipulated that following a transfer (other than intra-group transfers and transfers to the primary lenders), the VGH was to pay Government a laudemium equivalent to one year's ground rent for the site assigned. No details of the laudemium requirement was specified in the RfP. Since the payment of a laudemium is standard following the transfer of an emphyteusis, the NAO considered this deviation as immaterial.

5.1.86 The Emphyteutical Deed also included other provisions that were missing in the RfP. While the Emphyteutical Deed stated that the areas accommodating a police station and an ATM were not being granted with vacant possession, the RfP was silent on these matters. While this information would have been useful for potential bidders to better plan site use and further development requirements, the NAO is of the opinion that this omission was inconsequential considering the vast areas of the sites. Similarly, the RfP failed to mention that the concessionaire was to grant Government access to and non-exclusive use of the helipad, which requirement was stipulated in the Emphyteutical Deed. The NAO does not consider this omission material.

5.2 Comparison of the bid by Vitals Global Healthcare with the contractual framework

5.2.1 Salient points from the VGH bid were compared to the contractual framework to identify whether the contracts committed the extent of investment and level and range of care specified in the bid and whether capacities, fees and other operational features stipulated in the contracts matched or improved on those proposed by the VGH in its bid. In most aspects, the NAO noted consistency between the VGH bid and the contractual framework that was subsequently entered into between the Government and the Concessionaire. Instances where discrepancies were noted are presented hereunder, categorised according to theme.

Capital investment

5.2.2 In its bid, the VGH stated that the project's total capital expenditure would amount to €170,000,000, the total replacement capital expenditure would amount to €153,000,000 and that it intended to commit an additional €20,000,000 for the leasing of medical equipment. 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 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 in its technical and operational evaluation. What the SCA included was generally a high-level description of the renovations, refurbishments and additional developments and structures required, describing their intended use, and required facilities, equipment and capacity. Regarding the lack of thorough provisions in terms of the investment, the Negotiation Committee stated that the contract was intended to manage outputs and end-user service requirements rather than inputs and investment. In this

respect, the contract included KPIs, which KPIs would require adequate investment to ensure the required output levels and quality. The Committee argued that this approach provided the flexibility required for a contract of this complexity and this duration, to allow the inputs to reflect the needs, circumstances and technology at different stages in the concession to achieve the stipulated outputs. Nevertheless, the NAO is of the opinion that the outputs expected in relation to the capital investment sought by Government and that bid for by the VGH ought to have been specified in far greater detail in the contractual framework. It is with concern that the NAO notes that the standard that ought to have guided the Committee in setting these specifications existed within the SCA, albeit solely in relation to the investment for the Barts Medical School. All other elements of the project remained at too high a level to provide the Government with any appropriate control over this key deliverable.

Service and facilities specifications

5.2.3 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, namely, with respect to the GGH, its total built-up area, the site area for the new wing, and its parking area, as well as the areas within the KGRH and the SLH designated for rehabilitation, dermatology and holistic services for patients covered by the national health service, long-term acute geriatric care for patients covered by the national health service, medical tourism and the nursing school. However, of note was that the site areas for the medical school and the dedicated research and development centre were specified in the SCA. This was consistent with the more detailed specifications sought for those areas to be used mostly by Barts. On the lack of design specifications in the SCA, the Negotiation Committee explained that the designs of the buildings were to be approved by the HCC and therefore Government had full control over the designs. On the other hand, the Committee emphasised that the medical school specifications were included to ensure that the commitments with Barts Medical School would be honoured. Nonetheless, in the NAO's opinion, the site areas were basic specifications that should have been included in the contracts. While bed capacities could be considered a proxy for site areas, it must be acknowledged that areas such as laboratory facilities, canteens and outpatient clinics render these specifications indicative at best. 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.

5.2.4 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. The only provision stipulated in relation to residential accommodation was a clause in the HSDA that stated that the VGH was to provide such facilities as required, if covered by a separate agreement. On the matter, the Negotiation Committee noted that detailed designs as required by Barts Medical School were included verbatim in the SCA, and again referred to the role of the HCC in the approval of designs for all other buildings.

5.2.5 Regarding the nursing institution at the SLH, the VGH bid identified the Malta Enterprise property as the designated site, included a deadline for its completion, set as the second half of 2016, and specified the footprint of the school as equal to 2,500 square metres. On the other hand, the contracts did not include these details, which in the NAO’s opinion was evidence of a weakness in the contractual framework. This was in stark contrast with the provisions cited for the medical school at the GGH, which included details of layouts, equipment requirements for various facilities, switch ports and AV equipment, as well as descriptions of teaching activities, learning and teaching facilities, roles and responsibilities of parties, and quality and monitoring requirements. The NAO noted that, during the RfP clarifications process, queries were raised by potential bidders as to the Government’s requirements in relation to the nursing institution at the SLH, with bidders requesting a full and exhaustive list of the needs, layout, footprint and equipment required, as well as details regarding the entities running the institution, and the fees and costs to be refunded to the concessionaire. Details were also requested regarding Government’s role in attracting a technical operator for this institution. Bidders were simply informed by Projects Malta Ltd that Government intended to establish the institution early on in the concession period and that it was to cooperate with the concessionaire in identifying and attracting a suitable operator to run the institution and that they were expected to propose an investment that met nursing university-level standards. When queried by the NAO regarding the discrepancy in the level of details included in the SCA for the medical school and the nursing institution, the Negotiation Committee explained that the specifications related to the medical school were included to ensure that the commitments with Barts would be honoured, whereas the nursing school was still at a conceptual stage and no detailed designs were available at that point in time. However, the Committee asserted that the designs for the nursing institution had to be approved by the HCC.

5.2.6 Some deviations were noted between the VGH bid and the contracts with respect to the site capacities. While the VGH proposed the inclusion of 225 beds in the acute wing, in response to the RfP which suggested a capacity of 200 to 250 beds, the SCA retained the range of 200 to 250 beds stipulated in the RfP. When queried regarding the matter, the Negotiation Committee asserted that the HSDA specified the number of beds that Government was ready to commit to, which was in agreement with the VGH’s bid and the RfP. Nonetheless, it remained unclear why the contract did not stipulate the number of beds committed by the VGH in its proposal, that is, 225 beds, and instead provided for flexibility within a range, which ultimately could translate in less beds than specified in the VGH bid. In the case of the long-term care facility at the GGH, part of the VGH bid cited a capacity of 200 beds, consistent with the RfP and the SCA, while another part of the VGH bid, which provided a detailed breakdown of the various wards, cited a capacity of 175 beds. The NAO acknowledges that where the bid deviated from the requirements stipulated in the RfP, and failed to guarantee minimum requirements, the best solution was for the contracts to include the requirements stated in the RfP, rather than that proposed by the bidder, as was done in this case. The NAO also noted that the number of beds specified for different areas of the long-term care facility within the GGH in the VGH bid and the HSDA varied, and in turn these values did not

tally with those specified in the RfP. It is unclear whether the discrepancies in numbers are a reflection of an inconsistency in the labelling of various areas within the GGH or whether they are real discrepancies in the quoted figures for the number of beds required.

5.2.7 While the VGH bid and the HSDA indicated that the KGRH was to include 320 beds for long-term geriatric patients, the SCA stipulated 300 beds, which was in agreement with the RfP. With respect to the SLH, the VGH bid included the provision of 50 long-term beds within the SLH, to be provided to Government to supplement the KGRH, which beds were not included in the HSDA. In this respect, the HSDA was consistent with the RfP. However, the NAO noted that the SCA included a concession milestone for the provision of 50 additional beds for the KGRH at the SLH, which was set at 1 January 2017. Additionally, the VGH bid stipulated that the project envisaged the renovation and upgrading of the existing premises at the KGRH to accommodate 320 beds for long-term acute geriatric patients, that is, providing an additional 50 beds from the current supply of 270 beds. Therefore, the 50 long-term beds listed as SLH beds were understood to constitute the KGRH beds for the purpose of the contract milestones and bed provisions. Additionally, the VGH bid indicated that the SLH and the KGRH would collectively cater for 632 beds. However, the SCA mentioned 80 rehabilitation beds at the SLH, 300 long-term beds at the KGRH, 12 dermatology beds at the SLH and 150 medical tourism beds at the SLH, which total 542 beds. The 20 extra beds cited in the HSDA for the KGRH bring the total to 562 beds, 70 beds less than the capacity indicated in the VGH bid. The NAO deemed it likely that these 70 beds corresponded to the additional medical tourism beds proposed by the VGH with respect to the SLH. This Office is of the opinion that Government ought to have bound the VGH to provide the capacities it had proposed in its bid where these exceeded the minimum requirements stipulated in the RfP.

5.2.8 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. When queried on the matter, the Negotiation Committee explained that it was not involved in these negotiations and that the subcommittee responsible for technical health matters (that is, the CEO GGH and the CEO KGRH) negotiated the changes introduced in second Addendum to the HSDA. However, the Committee contended that the exclusion of certain services without a complementary reduction in fees payable by Government was to be understood in the context of the inclusion of the additional beds at the GGH through the first Addendum to the HSDA. The Committee argued that these additional beds implied less potential revenue for the VGH, since the rates offered by Government were less than the market rates. Contrary to that stated by the Committee, the CEO GGH and the CEO KGRH maintained that they had no recollection of being involved in effecting these changes and neither were they requested to provide any feedback regarding changes in the service offering. The lack of visibility over the process

reported by the CEO GGH and the CEO KGRH may have limited their understanding of the context and reason associated with the information sought from and provided by them.

5.2.9 A detailed breakdown of the differences noted between that proposed in the VGH bid and that specified in the HSDA are outlined in the ensuing paragraphs.

5.2.10 The NAO noted instances where the VGH had proposed a higher number of beds for a specific ward or speciality than included in the HSDA. Since the HSDA specified the beds required for local needs while the VGH bid referred to bed capacities, such discrepancies were not considered material. For example, while the VGH proposed the inclusion of 30 beds in the orthopaedic ward, the HSDA provided for 10 beds for local needs. However, the NAO notes that Government did not bind the VGH to specific bed capacities by ward or speciality in the SCA, which instead only included capacity provisions at the facility-level.

5.2.11 In the case of the Orthopaedic Department at the GGH, the VGH had proposed including two outpatient wards while the HSDA more vaguely listed dedicated outpatient facilities. While the VGH bid and the HSDA cited the provision of day surgeries for minor orthopaedic procedures, the VGH bid proposed five day-beds for minor surgeries, a detail omitted in the contracts. With respect to gastroenterology and endoscopy at the GGH, the NAO noted that the HSDA specified that current levels of throughput for endoscopy procedures were to be maintained, specifying 1,250 as the number of procedures undertaken in 2014. This contrasted with the VGH's bid, which envisaged 1,000 procedures per year. A centre for cancer care was proposed for development at the GGH by the VGH in their bid; however, this was excluded in the HSDA, in its original and amended forms.

5.2.12 The scope of neurology services at the GGH proposed by the VGH in their bid was reduced in the original HSDA, and further reduced in subsequent amendments through the second Addendum to the HSDA. Initially, the VGH proposed a department of neurology with a dedicated team of academic neurologists to pursue the three-part academic mission of clinical care, research and education and highly-skilled physicians with subspeciality expertise in each of the domains of adult neurology available to provide care to patients as well as direct laboratory or clinical research programs. In the second Addendum to the HSDA, the reference to a 'department of neurology' was removed and replaced by 'neurology services', the reference to 'physicians with subspeciality expertise' was removed and replaced by 'necessary specialists and trained nurses', and the research element was excluded.

5.2.13 The emphasis on training and research was less pronounced in the contracts when compared with the VGH bid. With respect to the medical imaging department at the GGH, the reference to the hospital's involvement in the Barts Medical School's radiology residency training program and the hospital's affiliation with various educational institutions providing clinical placement for medical radiation technology students in ultrasound, general radiography, MRI and nuclear medicine, as well as the participation in research studies in collaboration with Barts were all eliminated in the HSDA. Similarly, the reference to the affiliation with

the Barts Medical School and the teaching and research in the area of medical laboratory and pathology included in the VGH bid was excluded in the HSDA. While the VGH proposed integrating equipment and technology equipment within surgery rooms at the GGH to be able to broadcast to the medical school students and across the medical world, the contracts did not include provisions in this respect. This exclusion implied a loss of investment for Government that the VGH had committed to.

5.2.14 Various services were included in the VGH bid and in the original HSDA but were excluded in the second Addendum to the HSDA. With respect to cardiology services at the GGH, a heart centre, advanced arrhythmia centre and endovascular surgery centre were included in the VGH bid and in the original HSDA, but omitted in the second Addendum. Similarly, the 16 cardiology beds proposed in the VGH bid, reduced to five cardiology beds in the original HSDA, were all excluded in the second Addendum. The immunology department and its services for the investigation, diagnosis and treatment of conditions related to the dysfunction of the immune system, genetic counselling, genetic testing and a hepatology clinic were proposed in the VGH bid for inclusion within the GGH, and included in the original HSDA; however, all were excluded in the second Addendum. Similarly, through the Second Addendum, sleep labs, neuro-diagnostics, intensive monitoring and electronystagmography were excluded.

5.2.15 The Consultant MFH explained that certain exclusions in services to be offered at the GGH effected through the second Addendum to the HSDA were reasonable and legitimate, since the low volumes in Gozo made their provision from the GGH unrealistic and clinically unsound. It was not in the interest of patients that the GGH provide highly specialised and infrequently utilised services as this could result in the deskilling of specialists posted at the hospital, with increased risks for patients. These exclusions related to robotic surgery, open heart surgery, neurosurgery and the use of a linear accelerator in oncology services, which were estimated to cost the VGH approximately €9,000,000. Having relinquished responsibility for these services, the VGH also benefitted from less costs relating to the running of these services. However, the MFH emphasised that, according to the contracts, the obligation to provide equipment required for the provision of these services remained, and therefore the Ministry insisted that these were to be provided in the future. Furthermore, the MFH was of the opinion that while the contractual framework focused on sourcing capital investment, the flow of HR to the GGH was miscalculated, with key medical personnel reluctant to be posted in Gozo.

5.2.16 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. In the case of paediatric services at the GGH, a child and adolescent mental health service was introduced through the second Addendum. On the other hand, the NAO noted that the detailed list of facilities and technology available within this ward, as included in the VGH bid, was excluded from the HSDA. The number of beds in the gynaecology ward at the GGH was increased from 10, as

proposed in the VGH bid, to 12, as stipulated in the HSDA. In the case of medical imaging at the GGH, dental imaging was introduced in the original HSDA, and fluoroscopy with respect to general radiography together with interventional ultrasounds were introduced through the second Addendum. The VGH bid proposed nine geriatric inpatient wards at the KGRH, while the HSDA provided for 11 wards – four assessment wards, five medical geriatric wards and two geriatric rehabilitation wards.

- 5.2.17 While the VGH anticipated 10,000 surgical procedures a year in its bid, it only included 2,000 hours in the minimum fee. However, the NAO understood that the estimated annual surgical procedures included figures related to medical tourism. This understanding was based on the fact that, at RfP clarifications stage, potential bidders were provided with an itemised list of surgical procedures performed at the GGH in the previous three-year period, which totalled 757, 758 and 1,105 for 2012, 2013 and 2014, respectively. This Office noted a positive development at contractual stage, with the HSDA providing for a threshold of 3,300 annual surgery hours in the minimum charge.

Medical tourism

- 5.2.18 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. While the VGH proposed 220 beds for medical tourism at the SLH, the SCA only provided for 150, the same as the number stipulated in the RfP. The VGH proposed 100 beds at the GGH for medical tourism purposes, yet these were not listed in the contracts. While acknowledging that the RfP did not purposely request medical tourism beds at the GGH, medical tourism could be offered from any of the sites provided that the minimum requirements set were met, as explained to potential bidders at the RfP clarifications stage.
- 5.2.19 When queried on the matter, the Negotiation Committee asserted that it was in the VGH's interest to develop the medical tourism sector, since, as explained by the Evaluation Committee, without it the project was unsustainable. In this respect, the contracts focused on Government's bed requirements. Bearing in mind that the VGH bid 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 its 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.
- 5.2.20 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 Concessionaire when one considered the medical tourism element, the NAO is of the opinion

that the absence of performance targets in the contract created an element of uncertainty regarding the sustainability of the project. In a meeting with the NAO, the PS MOT argued that the medical tourism element was a component of the project that was not given its due importance, despite that Government was banking on this element to obtain efficiencies and more advantageous prices for health services. Supported by this comment, the NAO reaffirms its view that medical tourism targets were to be contracted.

Timeframes

5.2.21 With respect to the deadlines for concession milestones, inconsistencies were noted by the NAO. In the case of the GGH, the VGH bid stipulated July 2016, January 2017 and December 2017 as the dates of completion of the medical college, the completion of the new wing and the renovation of the existing facilities, respectively. This was consistent with the milestones included in the RfP. On the other hand, the SCA stipulated July 2017, May 2018 and September 2018 for these milestones, respectively. In the case of the KGRH, the VGH committed to providing the 50-bed extension by November 2015 in their bid. In the SCA, this milestone was postponed to 1 January 2017. In its bid, the VGH staggered the completion of the SLH into three stages to arrive at the intended 300-bed capacity: 50 beds by December 2015, an additional 100 beds by April 2016 and the remaining 150 beds by September 2016. On the other hand, the SCA only included a milestone for the 80 rehabilitation beds to be provided to Government, stipulated as 30 September 2017. Generally, the NAO noted that the timeframes were extended in the SCA compared to the VGH bid. The Addendum to the SCA (paragraph 4.10.13) further extended the timeframes for VGH.

Applicable fees

5.2.22 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. The NAO noted that the rates for the GGH acute beds, the GGH geriatric beds, the KGRH beds and the SLH rehabilitation beds proposed in the VGH bid matched those provided for in the HSDA. In the case of holistic care outpatient visits, this Office 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 (€300 per bed night and €40 per visit, respectively) and for each helicopter airlift (€8,500 per use), 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. The HSDA stipulated that the Government was to pay €2,000,000 per year for dermatology services, which services included 12 inpatient beds and any outpatients up to a maximum of 27,500 outpatient visits, and €1,000,000 a year for the air ambulatory services, providing for a maximum of 200 airlifts per year. Queries were raised by the NAO with the Negotiation Committee as to why Government opted for this revised price structure. The Committee indicated that the concept of charging for outpatients from the first entry was only introduced with respect to dermatology service and therefore

it was deemed necessary to include a fixed rate from the start. Elaborating in this regard, the Committee cited cost savings registered in relation to the dermatology service (20 per cent savings) and the air ambulatory service (70 per cent); however, no information substantiating claimed savings were provided. The NAO noted that these savings only apply if the maximum capacity of visits and airlifts are utilised. Notwithstanding that stated by the Committee, it remained unclear to this Office why Government chose to deviate from the fee structure proposed by the VGH in its bid.

5.2.23 Of note was that full occupancy of the 12 dermatology beds and full uptake of the 27,500 outpatient visits costed at the per unit rate proposed by the VGH would amount to €2,414,000. By way of example, an average occupancy rate of 10 inpatient beds and an uptake of 22,625 outpatient visits charged at the per unit rate proposed by the VGH would amount to €2,000,000, the same charge included in the HSDA as a flat fee. To the extent that the use of dermatology services in any particular year would be close to the maximum allowance, then Government's decision to opt for a flat charge would be considered as cost-effective.

5.2.24 When considering the cost-effectiveness of the flat fee relating to airlifts, the NAO noted that the VGH bid assumed an average utilisation of 120 airlifts a year, which was much lower than the capping provided in the HSDA, of 200 airlifts. A simple proportion of the total airlifts divided by the total cost would imply a rate of €5,000 per airlift (200 airlifts for a fee of €1,000,000), which was substantially lower than the €8,500 rate included in the VGH bid. However, this rate comparison only stands if Government utilises all 200 airlifts on a yearly basis. Since Government would not be paying pro rata for airlift usage but a fixed amount for a maximum of 200 airlifts, the price per airlift is only cheaper than that originally bid by the VGH (€8,500 per airlift) if in a specific year Government utilised at least 118 airlifts. In considering these calculations it is relevant to note that the VGH bid assumed an average utilisation of 120 airlifts a year.

5.2.25 The VGH bid envisaged income from Barts in terms of 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, specified as €225 per square metre, of which €170 per square metre represented the rental rate for the building and €55 per square metre represented the compensation for the maintenance works and the time allocation of the professionals at the GGH to the students of the medical college. In another section of the bid, the VGH indicated that the total annual charge to Government was €1,300,000. Moreover, in its financial bid, the VGH projected the income from the medical college for 2017 (envisaged as the first year the college would be in operation for a full year) as €1,268,000. This fee was subject to a two per cent annual increase, up to a maximum of €2,165,000 in 2044. On the other hand, the HSDA included a provision for Government to pay €1,200,000 annually to the VGH as lease payment for the medical college. The NAO understood that the two per cent yearly inflation increase applicable to the minimum charge was also applicable in this case. Of note is that while the RfP indicated that the title for the structure of the medical college was to be granted to the operator, it did not mention that the

concessionaire was to receive any payment in this respect. However, the RfP did not restrict or limit the concessionaire's right to charge a lease payment in respect of the medical school if it wished to include such a charge in its payment structure for services rendered. It was unclear to the NAO whether Government would be recouping the lease payment from Barts or whether this was a cost that Government was incurring as queries addressed to Malta Enterprise remained unaddressed.

5.2.26 The NAO noted two queries raised by potential bidders during the RfP process that were related to the compensation for the medical college. One bidder sought information regarding the mechanisms for the refund of costs involved in the setting up of the medical school, its running, and the maintenance and service agreement fees for equipment, among other costs. In its reply, Projects Malta Ltd indicated that the RfP did not include a refund for costs incurred by the concessionaire in the setting up of the school, and that the business plan to be proposed by bidders was to cater for such a refund. However, operating costs were not to be borne by the concessionaire. Projects Malta Ltd was also asked to confirm the method and amount of reimbursement and payment by Barts to the concessionaire for the use of the medical school and for ancillary and support services. In this instance, Projects Malta Ltd indicated that the concessionaire would be entitled to receive income in relation to the hosting and support of the medical school every six months in advance, with effect from the operational commencement date of the facility. This income was to be reckoned following the lapse of three months from the practical completion of the facility. The amounts payable were as follows: nil for the years 2014/2015 and 2015/2016, €190,200 for the year 2016/2017, €309,400 for the years 2017/2018 and 2018/2019 and €943,400 for 2019/2020 up to 2030/2031. If the number of new students per academic year, as determined on 1 December of each academic year, based on a three-year rolling average, exceeded 60, the income was to be increased by 10 per cent of the additional student tuition fees for each additional student. Since the tuition fees were to be at least €30,000 per student, then the concessionaire was to receive at least €3,000 per additional student above the 60 count. The concessionaire was also entitled to claim a service charge to cover all costs associated with the maintenance and administration of the common parts. This charge was to be calculated in accordance with the following formula:

$$\text{service charge per square metre per annum} = \frac{\text{(total annual cost of maintenance of the common parts)}}{\text{(total lettable area of the common parts)}} * \text{total lettable area occupied by Barts}$$

5.2.27 It was unclear to the NAO whether these costs were additional to or part of the annual €1,200,000 specified in the HSDA as the lease payment for the medical college.

5.2.28 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. The total cost for inpatient and outpatient services, airlift services and lease of the

medical college was stipulated as €75,737,000 in the VGH bid and €72,856,500 in the HSDA. If one were to compare the same calendar year, 2018, the difference between these values is even greater, with the VGH bid estimating €77,253,000 in costs for Government. 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.

Partnerships and human resources

- 5.2.29** 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 (MANV) 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.
- 5.2.30** The NAO noted that in evaluating the technical compliance of the VGH bid, the RfP Evaluation Committee had explicitly referred to the formal agreement entered into with the MANV. More specifically, in considering whether the VGH had the necessary skills to execute the project, the Evaluation Committee noted that the MANV had the necessary network of physicians and wealth of knowledge in medical and clinical areas to provide the VGH with management, support and guidance for the project. This strategic partnership takes on greater significance given that the experience cited for Oxley Group mainly related to real estate investment trusts and funds, asset management and financing. There is no mention of the MANV (or equivalent) in the contracts.
- 5.2.31** While the VGH bid stated that all rehabilitation centres were to be managed in partnership with the Walter Reed Medical Centre of Prosthetics, in the HSDA this cooperation was limited only to the GGH. In its assessment of the VGH's technical compliance, the RfP Evaluation Committee noted that the partnership with the Walter Reed Medical Centre of Prosthetics, with its rehabilitation service facility, was instrumental in ensuring that the three local medical facilities enjoyed the best-in-class expertise and global reputation. However, the CEO GGH indicated that, to her knowledge, the only experts who were consulted were the PHI. In turn, the CEO KGRH noted that apart from the PHI, collaborators with the Walter Reed Medical Centre of Prosthetics were consulted to provide expertise in relation to the prosthetics department.

- 5.2.32 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. Regarding the applicable terms and conditions, the NAO noted that the employee profit-sharing scheme proposed by the VGH in its bid was not mentioned in the contracts, and therefore, the VGH was not bound to implement this scheme. The omission of this provision assumes relevance when one considers that the RfP Evaluation Committee also assessed the VGH on its plans to promote staff satisfaction and retention.
- 5.2.33 The NAO noted that while the SCA outlined the role and composition of various committees overseeing the concession, these same provisions were not included for the medical advisory board, which according to the VGH bid was to be responsible for hospital management. The only reference to the medical board in the contracts was made in the HSDA, whereby the medical board was presented at the top of the VGH organisational chart. Specifically, the participation of the MFH, Barts and the MANV, as members of the board, which was outlined in the VGH bid, was not included in the contract provisions.

Chapter 6 | Adherence to the contractual obligations

- 6.0.1 In Chapters 3 and 4 of this report, the NAO presented the contractual framework that was to regulate the concession awarded by the Government to the VGH for the redevelopment, maintenance, management and operation of the SLH, the KGRH and the GGH. Part of the terms of reference mandated to this Office by the PAC comprised the review of this contractual framework, whereby the NAO was to verify whether services provided adhered to contract requirements and whether contractual targets set have been realised. The NAO's review of the SCA and the HSDA addresses this aspect of analysis. In addition, the NAO was tasked with the review of provisions regulating the labour rights of public officials in relation to the concession, and it is in this context that this Office's analysis of the LSA must be seen.
- 6.0.2 Responsibility for ensuring that the VGH adhered to the contractual requirements in the implementation phase of the concession was dichotomously assigned. According to the MFH, the Ministry was responsible for ensuring the appropriate implementation of the operational element of the concession by the VGH, while Projects Malta Ltd retained oversight of the capital investment that was to be undertaken by the Concessionaire. The MFH highlighted the significant difficulty in overseeing the implementation of voluminous contracts, a process made even more challenging by the fact that the Ministry had not been involved in negotiations with the VGH.
- 6.0.3 It was in this context that the MFH sought the assistance of the Negotiation Committee in the interpretation of the agreements. The Partner RSM, a member of the Negotiation Committee, confirmed requests for assistance made by the MFH and indicated that meetings were held to address concerns raised by the MFH. In turn, the CEO BEAT Ltd, who served as Chair of the Negotiation Committee, argued that the contractual framework contemplated the setting up of several committees intended to facilitate communication between the parties and for Government to monitor progress registered. Elaborating in this regard, the CEO BEAT Ltd stated that it was a prevalent practice for Government to work in silos, whereas such scenarios required coordinated work through multi-disciplinary teams.
- 6.0.4 In submissions made to the NAO, the MFH argued that the earlier involvement of the Ministry, particularly at the contract drafting stage, would have facilitated the subsequent oversight of implementation thereof. Specific reference was made to the divergencies noted in terms of that contracted and that to be implemented, as well as the subjectivity in the interpretation of certain clauses. Notwithstanding the reservations expressed, the PS MFH maintained that the Ministry sought to implement that set to the best of its ability. Nevertheless, the PS MFH conceded that the process could have been designed in a more logical manner, particularly through the involvement of technical experts that would have followed through the process from concept design through to implementation. Similarly, the Advisor MFH argued that the clinical team responsible for implementing the contract should have been involved in drafting the requirements of the RfP.

6.0.5 The Minister for Health corroborated that stated by the PS MFH and other MFH officials, when outlining the dichotomy in the oversight of implementation of the concession's contractual framework. Elaborating in this regard, the Minister for Health indicated that the monitoring of the concession was to be undertaken through two main structures, that is, the PMB and the QAB. The Minister for Health emphasised that the PMB was headed by Projects Malta Ltd under the direct responsibility of the Minister for Energy and Health and continued to do so even when subsequent changes in ministerial portfolios were made as decided by the then Prime Minister. In turn, the Minister for Health acknowledged that the QAB remained under his responsibility throughout.

6.1 The implementation of the obligations arising from the Services Concession Agreement, its addendum and side letters

6.1.1 The NAO sought to obtain insight into whether the provisions stipulated in the SCA were complied with. Of relevance in this respect were 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 and whether the agreed concession milestones were delivered. Key in establishing understanding in this regard were the minutes of the meetings held by the HCC, the HMC and the PMB.

Constitution of the committees of oversight

6.1.2 The NAO requested information regarding the setting up of the HCC, the HMC, the PMB and the MMB. While this Office was provided with a list of the members of the first three of these committees, the relevant letters of appointment and the basis on which these members were selected were not provided. Further details regarding the constitution of the MMB are provided in paragraph 6.1.10.

6.1.3 The HCC, set up in August 2016, was composed of six members, namely, the CEO Projects Plus Ltd, an OPM official, an official of the Minister's secretariat within the MFH, the CEO of the Foundation for Medical Services (FMS), an official of Projects Malta Ltd and an architect. The CEO Projects Plus Ltd was to chair the HCC.

6.1.4 The HMC, similarly set up in August 2016, was also composed of six members, namely, the CEO Projects Plus Ltd, two officials of Projects Malta Ltd, an official of the Minister's secretariat within the MFH, the CEO FMS and a consultant. The CEO Projects Plus Ltd was to chair the HMC.

6.1.5 The PMB, which was also established in August 2016, had as members the CEO Projects Plus Ltd and an official of the Minister's secretariat within the MFH. The remaining three members of the PMB, who were to represent the Concessionaire, were to be identified by the VGH.

6.1.6 An element of context to the appointment of members to these committees was sourced through correspondence dated 16 August 2016 submitted by the Executive Chair Projects Malta Ltd to the CEO Projects Plus Ltd. Referring to the provisions of the SCA, the Executive Chair Projects Malta Ltd noted that following discussions held with the Minister within the OPM and the PS OPM (Energy and Projects) (referred to elsewhere in this report as PS MOT), the various members that were to be appointed to the HCC, the HMC and the PMB had been identified. Aside from this correspondence, by means of which the CEO Projects Plus Ltd was appointed as Chair or member to all of the aforementioned Committees, the NAO was not provided with the relevant letters of appointment of the other members of the Committees despite requests to this effect forwarded to the PS MOT and Projects Malta Ltd.

6.1.7 While the NAO had no visibility over whether the Committee members were informed of their respective terms of reference, correspondence reviewed provided some insight in this regard. On 25 May 2016, the CEO BEAT Ltd provided the Minister within the OPM and the Executive Chair Projects Malta Ltd with the Committees' terms of reference. Attached to this correspondence were excerpts of the SCA that related to the setting up of the operational bodies that were to oversee the project. The terms of reference of the PMB were included herewith. For ease of reference, one may refer to paragraph 3.1.35 for the detailed terms set regarding the PMB.

6.1.8 The terms of reference pertaining to the HCC did not form part of the contractual framework, yet were included as part of this correspondence. The HCC was to be guided by the following terms, namely, to:

- a appoint the members forming part of the PMB in which the Government was being represented;
- b review and approve the final designs submitted by the Concessionaire for the purpose of completing the project;
- c review and approve any changes in the final designs that impact the designs and the QMUL requirements;
- d keep itself informed on any updates and progress achieved to date on the project following interaction with its representative on the PMB and update the MFH and Projects Malta Ltd accordingly;
- e review reports submitted by the PMB and ancillary reports provided by the third party expert;
- f review cases where, in the opinion of its representative on the PMB, the quality of works being carried out by the Concessionaire was not in accordance with the requirements set out in the concession and determine whether to institute a perceived breach procedure; and

- g review cases where, in the opinion of its representative on the PMB, delays in the completion of works were not justified and determine whether to institute a perceived breach procedure.

- 6.1.9 The NAO noted that the terms of reference corresponding to the HMC were not included in this correspondence and therefore remained unavailable to this Office.
- 6.1.10 As regards the constitution of the MMB, the PS MOT and the PS MFH were unaware as to whether this Board was set up, with queries referred by the NAO redirected to one another. At the time of reporting, this Office had no knowledge as to whether the MMB was constituted and, in the affirmative, who its members were. In addition, despite requests made, the NAO 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.

Minutes of meetings held by the Committees

- 6.1.11 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. A record of this decision could be traced in the minutes of the meeting held on 6 October 2016, wherein it was decided that for communication and efficiency's sake, the PMB, the HMC and the HCC would be meeting together fortnightly.
- 6.1.12 In terms of attendance, the CEO Projects Plus Ltd and the official of the Minister's secretariat within the MFH attended all joint meetings of the HMC, the HCC and the PMB. Others, namely, the CEO FMS, an official of Projects Malta Ltd, an OPM official and the architect forming part of the HCC regularly attended the meetings. Another official of Projects Malta Ltd, a member appointed to the HMC, failed to attend all meetings bar one, while the consultant, also appointed to the HMC, resigned following attendance of a few meetings citing personal reasons. Several of the meetings were attended by a group of representatives of the VGH, in line with the requirements of the PMB. A representative of the PHI attended two meetings. Throughout the period within which the committees met, several officials who had no formal appointment to any of the committees attended meetings. These included officials of Projects Malta Ltd, an official of Projects Plus Ltd, a Planning Authority (PA) official and a representative of the MFH. Two members of the Negotiation Committee also attended one of the meetings.

6.1.13 The HMC, the HCC and the PMB, in their combined format, met several times between August 2016 and April 2017. A record of the salient developments registered in these meetings is presented hereunder in chronological order.

Meeting held on 17 August 2016

6.1.14 The first meeting of the HMC and the HCC was held on 17 August 2016. Acknowledged in this meeting was that the concession contracts had not been made available to most members of the committees. In view of their role as members of the monitoring committees, a comprehensive explanation of the contracts was to be sought. Note was taken of action agreed in this respect, whereby two members of the Negotiation Committee were to provide an explanation of the contracts to the HMC and the HCC on 12 September 2016.

6.1.15 Also noted was that the VGH had already started working on the project and that the HCC was lagging behind in its monitoring function. For this purpose, a meeting was scheduled with the VGH on 15 September 2016 to obtain an update on the works carried out and the upcoming schedule of works.

6.1.16 The relocation of government units from the SLH was discussed, with the Committee's Chair indicating that he would be seeking information from the VGH regarding the timetable of relocation as expected by Government. The official from the Minister's Secretariat within the MFH referred to the importance of engaging the required third party experts and noted that he was to obtain high level direction in this regard.

6.1.17 Finally, one of the members of the Committees, an official of Projects Malta Ltd, was appointed secretary to the HMC and the HCC.

Meeting held on 20 September 2016

6.1.18 The following meeting was held on 20 September 2016, during which a presentation was given by two members of the Negotiation Committee to the HMC and the HCC regarding the contracts. The members of the Negotiation Committee stressed that the whole project was a PPP initiative and hence Government monitoring was to focus on the outcomes and services rather than the technicalities of the infrastructure, which responsibility was to be borne by the VGH. Also noted by the members of the Negotiation Committee was that third party experts were to be appointed by the PMB, that it was the responsibility of the Concessionaire to clear unwanted items from the site, and that Government could conduct spot checks over and above the reports available to it through the contractually established reporting framework, though this would imply additional costs.

6.1.19 Of note to the NAO was that the official from the Minister's Secretariat within the MFH observed that there were discrepancies in the beds available to Government. A member

from the Negotiation Committee was to clarify this issue; however, the review of minutes of subsequent meetings held resulted in no such clarification.

- 6.1.20 Also noted in the minutes of this meeting was that the meeting with the VGH that had been scheduled for 15 September 2016 had taken place at the Malta Enterprise premises. The NAO was not provided with records of this meeting between the Committees and the VGH.

Meeting held on 22 September 2016

- 6.1.21 The next meeting was held on 22 September 2016. It was at this point that the HMC and HCC, that had previously met in a combined format, fused with the PMB. Consequently, this resulted in the attendance of several representatives of the VGH, with the primary focus now being project management.
- 6.1.22 The VGH contractor Shapoorji advised the Committees that the designs for the GGH and Barts Medical School were at a schematic stage. While the submission for the permit for Barts had been lodged, that corresponding to the GGH permit was to be applied for by mid-October 2016. An official of Innovative Architectural Structures (IAS), acting as a consultant on behalf of the VGH, informed the Committees that the PA had accepted to process the permit relating to the Barts Medical School separately, except for the anatomy centre, which was being considered a part of the GGH proper. The VGH contractor representative confirmed that Shapoorji was ready to commence works on Barts as soon as the permit was issued.
- 6.1.23 Elaborating on the works, the VGH contractor Shapoorji advised the Committees that works relating to the façade of the SLH, the stripping of the premises and the removal of asbestos could start. While Shapoorji indicated that the approval of the PA was at hand, several issues were to be addressed prior to commencement. These issues were referred to the MFH representative. The VGH representative highlighted the need to proceed with works at one go, thereby avoiding unnecessary stop and start situations, and stressed that he wanted works to commence before the start of the parliamentary season.
- 6.1.24 Several other issues were discussed during this meeting, including the removal of unwanted items and x-ray files, the relocation of several departments at the SLH, the utilisation of the 110 SLH maintenance employees on site, matters relating to the GGH canteen and car park, and the relocation of elderly persons cared for within the GGH long-term facility to a Church-run complex.
- 6.1.25 Furthermore, the VGH advised the Committees that it required temporary but full access to the Xewkija helipad. The VGH was willing to upgrade and refurbish this helipad; however, it indicated that a concession was necessary to justify the investment required.

Meeting held on 6 October 2016

- 6.1.26 Another meeting was held on 6 October 2016, wherein updates were provided regarding points discussed and issues raised in the preceding meeting. Noted in the minutes was that the VGH representative would be communicating with the QMUL for a representative of the latter to attend meetings held by the Committees.
- 6.1.27 During this meeting the VGH consultant IAS delivered a presentation of the plans for the Barts Medical School, stating that coordination with QMUL regarding relative approvals was ongoing. The VGH contractor Shapoorji noted that the tender for piling works was to close on 6 October 2016, that is, the day of the meeting, and that the PA permits were still pending. Shapoorji planned for a scenario where the permit for the works at Barts would be obtained by 15 November 2016, with relevant amendments to the design concluded by 30 November 2016. The VGH representative informed the Committees that Bureau Veritas required a signed copy of the approved Barts schematics, which subsequently tied in with the lenders' approval.
- 6.1.28 Other updates provided during this meeting included a notification by the VGH contractor Shapoorji that façade restoration works were to commence, acknowledgement by the Chair HMC and HCC that the relocation of certain departments was to be discussed with the MFH, authorisation sought by the VGH from the MFH regarding the removal of patient files and the provision of updates by the CEO FMS regarding relocation efforts. In addition, the VGH representative confirmed that the hospital layout codes to be used in this project were to be in line with EU standards and that the VGH was to accordingly update the MFH.

Meeting held on 20 October 2016

- 6.1.29 The subsequent meeting of the HMC, the HCC and the PMB was held on 20 October 2016. Updates to several issues were provided.
- 6.1.30 Regarding the permits required, the VGH representative informed the Committees that the schematics for the Barts Medical School were finalised. The VGH consultant IAS advised that all reports required by the PA were ready except for the Traffic Impact Statement and that the required permit was expected in January 2017. Regarding the Anatomy Centre and the GGH, the IAS informed the Committees that the PA required a master plan and that the VGH would be providing input in this respect by end October 2016. Additionally, the IAS highlighted that a phasing strategy would be required as part of the master plan, be it with respect to the GGH or the SLH.
- 6.1.31 Input by the VGH was also expected with respect to the SLH master plan. The IAS noted that a PA approved master plan was critical so that applications could be submitted for separate items. The VGH contractor Shapoorji acknowledged that the schematics for the SLH were urgently required from the VGH; however, Shapoorji noted that the priority for the VGH at

that moment was the Barts Medical School. Furthermore, in relation to the dangerous structures, Shapoorji affirmed that relevant recommendations would be provided to the Committees by end 2016.

- 6.1.32 The matter regarding the transfer of patient records was finally resolved during this meeting. Noted in this respect was that the MFH would be transferring these records by end November 2016.
- 6.1.33 The VGH contractor Shapoorji advised that the handover of the SLH site to the contractor was expected to happen in two stages. By the end of December 2016, the first floor upwards would be handed over. Subsequently, by the end of March 2017, the ground floor and level -1 would be handed over. Shapoorji also informed the Committees that detailed designs for amputee rehabilitation would be completed within three weeks. Regarding the physiotherapy facilities, several options were being reviewed in terms of compliance with evacuation procedures.
- 6.1.34 Also noted in the minutes was that the Malta Enterprise Facilities Department was to clear its equipment by end November 2016. The Chair HMC and HCC stated that the deadline for the relocation of the POYC store at the SLH was March 2017, while the relocation of the POYC store at the GGH necessitated the input of the MFH. The latter point was to be followed up by the official of the Minister's secretariat within the MFH.
- 6.1.35 Updates by the VGH contractor Shapoorji were also provided regarding the GGH canteen, the parking facilities and the hospital's IT infrastructure. In addition, the Chair HMC and HCC provided updates with respect to the relocation of the GGH Youth and Child Centre personnel and the relocation of elderly persons cared for within the GGH long-term facility to a Church-run complex.
- 6.1.36 Regarding the Xewkija helipad, the Chair HMC and HCC noted that Projects Plus Ltd had issued a tender for its reinstatement, which tender had come to a close on 20 October 2016, that is, the day of the meeting. Works were expected to be completed by end November 2016.
- 6.1.37 Finally, noted in the minutes was a clarification by the VGH contractor Shapoorji. Cited in this respect was that Shapoorji was ready to start works on the sites as soon as the permits were issued and when the sites were handed over free and unencumbered.

Meeting held on 17 November 2016

- 6.1.38 The ensuing meeting was held on 17 November 2016. An important update was provided by the VGH consultant IAS, who advised the Committees that the full master plan for the GGH and all other reports required had been developed and submitted to the PA. The IAS indicated that the permit would likely be issued by April 2017. Progress was registered in

terms of the permitting process required for the demolition of the SLH Emergency canopy, the chimney and the boiler house. Also noted was that the PA was in the process of verifying the heritage status of the old SLH kitchen. The IAS informed the Committees that feedback from Heery International regarding the SLH masterplan was still pending.

6.1.39 In turn, the VGH contractor Shapoorji provided updates on several matters. Included in this respect was information on progress registered with respect to the sourcing of quotations for works to be undertaken in connection with the removal of dangerous materials, the redesign of the carpark, the relocation of the temporary mortuary, and the rerouting of IT infrastructure.

6.1.40 The MFH representative advised the Committees that the patients' files were cleared and that the X-ray files and equipment would be cleared by end November 2016. Highlighted during the meeting was the expected delay in the transfer of the POYC stores to the CPSU stores, with the March 2017 target deemed as unlikely to be achieved, which in turn hindered the relocation of the physiotherapy department instead of the POYC stores. Shapoorji was to investigate whether it was possible for the physiotherapy department to move to alternative premises. Other minor updates related to the relocation of the Chest Clinic and Commcare, as well as the utilisation of the SLH maintenance personnel.

6.1.41 Updates were also provided by the Chair HMC and HCC. Regarding the parking spaces at the GGH that were to be made available to third parties and the relocation of the GGH Youth and Child Centre personnel, the Chair advised for these issues to be escalated to ministerial level. In addition, the Chair informed the Committees that the relocation of elderly persons cared for within the GGH long-term facility had almost been finalised and that the reinstatement works at the Xewkija helipad were nearing completion.

6.1.42 Noted in the meeting was that Government's representatives sought further clarification regarding the contractual clauses regulating the hospital layout codes. The IAS informed the Committees that it would be following up the issue with the VGH.

6.1.43 Correspondence exchanged on 22 November 2016 between the Secretary to the Committees and the CEO Malta Enterprise followed up on an issue raised during the meeting held on 17 November 2016. Indicated in this correspondence was that the Committees' members sought the involvement of representatives of the Barts Medical School in its meetings.

Meeting held on 1 December 2016

6.1.44 The following meeting of the HMC, the HCC and the PMB was held on 1 December 2016. Of note was that the consultant who resigned as a member of the HMC on 18 October 2016 was replaced by an official of the PA.

- 6.1.45 The involvement of the new member immediately assumed relevance as the Chair HMC and HCC indicated that his assistance could be required in relation to the submitted permit application given the urgency of the matter, and with respect to the demolitions to be carried out.
- 6.1.46 Speaking on the planned demolitions, the VGH consultant IAS informed the Committees that the possibility to demolish the old SLH kitchen was still being looked into. On the other hand, the authorisation for the demolition of the chimney, the canopy and the boiler house was likely to be granted, with the VGH awaiting a formal reply from the PA in this respect. The IAS noted two factors that were to guide decision-making relating to the demolitions, specifically that, they were to preferably be carried out jointly to save time and costs and that the ongoing operation of the KGRH was to be borne in mind.
- 6.1.47 The Committees also continued discussions on the relocation of several Departments to enable the contractor to undertake works at the SLH. The CEO FMS specified that moving the POYC Department to the old medical school was unfeasible. Further noted during the meeting was that the VGH was considering using the old medical school premises for the prospected nursing school with the Malta College of Arts, Science and Technology (MCAST) and would be reporting back to the Committees in this respect. The CEO FMS also advised that a bill of quantities was being drawn up for the upgrade of the CPSU building outside the SLH, which building would accommodate several relocations, so that the VGH/Shapoorji could send their quotation after. Permitting in this respect would be through a DNO. The CEO FMS also specified that a plinth and the strengthening of related structures were required for the relocation of the spectrometer to a new area. A bill of quantities for tender issuance was being prepared in this respect.
- 6.1.48 Other matters discussed during the meeting were the relocation of MITA infrastructure, the GGH Youth and Child Centre, and of the elderly persons receiving long-term care. While the MITA infrastructure had been moved out of the premises, the Chair HMC and HCC noted that the GGH Youth and Child Centre were to relocate within three months. The Chair was to verify whether the move could occur earlier. Regarding the relocation of the elderly persons being cared for within the GGH long-term facility to a Church-run complex, the Chair HMC and HCC advised that the draft agreement was finalised and awaiting Ministerial approval.
- 6.1.49 Other updates pertinent to pending relocations were provided by the MFH official, who notified the Committees that he was to check about the removal of the unused equipment at the SLH that the MFH did not want discarded and that he would be further informing the Committees regarding the relocation of the Chest Clinic during the subsequent meeting. The relocation of the SLH telephony system was likewise still to be discussed once all technical information was made available.

- 6.1.50 The VGH contractor Shapoorji provided additional updates to the Committees. In two months, the SLH's basement, ground floor and first floor had to be completely vacated for relative works to proceed. Shapoorji also informed the Committees that the study regarding dangerous structures had been concluded but was still to be discussed by Shapoorji, the VGH and the IAS.
- 6.1.51 Regarding access to parking spaces at the GGH, the Chair HMC and HCC reiterated that the matter was to be escalated to Ministerial level. It was emphasised that the school requesting the parking and drop off spaces had no right to these and that consequently, the VGH had no obligation to the school.
- 6.1.52 Other updates provided related to the Xewkija Helipad and the SLH masterplan. The Chair HMC and HCC confirmed that the works at the Xewkija Helipad were complete, measurements were ongoing, and trials had been successful. A formal agreement between the VGH and Gozo Helipad Services remained pending. Regarding the SLH masterplan, the IAS informed the Committees that feedback from Heery International was still pending.
- 6.1.53 A status report, appended to this meeting's minutes and titled 'Hospitals Concession Project Monitoring - General Status November/December 2016', was also provided to the NAO. The report comprised a summary of the progress that had been achieved by December 2016 with respect to permitting, works/mobilisation, relocation, and other matters, as discussed in the minutes of the Committees' meetings.

Presentation held on 17 January 2017

- 6.1.54 A presentation was given by the VGH to the HCC and the HMC on 17 January 2017. This presentation was titled 'International Hospital Design Standards – Overview and the PHI experience' and focused on the International Hospital Design Standards by the Facilities Guidelines Institute (FGI) and the experience of the PHI in this respect. Emphasised during the presentation was that the FGI was the standard for healthcare design throughout the United States and was becoming the norm internationally. Of note was the VGH's goal to attain Joint Commission International accreditation. The presentation also featured works carried out by the PHI, namely, at Shanghai Jiahui International Hospital, Wockhardt Hospitals Ltd, Acibadem Healthcare Group and the University Hospital at Dubai Healthcare City.

Meeting held on 26 January 2017

- 6.1.55 Another meeting of the Committees in their combined format was held on 26 January 2017. Discussions throughout this meeting revolved around permitting, works and mobilisation, relocations and other general matters.

- 6.1.56 The latest updates regarding the permitting process were provided by the VGH consultant IAS, who informed the Committees that the PA was to determine the Barts Medical School building application on 9 February 2017. The IAS indicated that on the assumption of a positive outcome, the VGH were discussing mobilisation with Shapoorji and that an archaeological monitor would be required for the excavations. In addition, the IAS advised that an Environmental Planning Statement was required by the PA for the GGH masterplan, including the Anatomy Centre. This implied an additional timeframe of two to three months for the process to be concluded.
- 6.1.57 Regarding works and mobilisation, the VGH representative expressed hope that the old kitchen at the SLH could be demolished and converted into an open space. The VGH consultant IAS noted during this meeting that the schematics from Heery would be available in the following days. The IAS also stated that ideally, the PA and Cultural Heritage Advisory Committee (CHAC) matters relating to the SLH kitchen, boiler house and Psychiatric Centre would be resolved as soon as possible as the VGH needed to carry out the necessary demolitions. The CHAC could ask to retain part of the building housing the Psychiatric Centre. He further noted that the VGH was following up on the chimney demolition with the Environment and Resources Authority (ERA).
- 6.1.58 Updates and discussion on relocation matters ensued during the meeting. The VGH consultant IAS advised that the SLH needed to be vacated completely. Stripping of the third level of the hospital and the old medical school was ongoing. The MFH representative specified that he was still pressing for information regarding the tentative move of the Chest Clinic to Sir Paul Boffa Hospital from Primary Healthcare. The VGH representative proposed a temporary move of the Chest Clinic to the OPU, which the Chair HMC and HCC and the VGH contractor Shapoorji were to investigate the feasibility of. The MFH representative further specified that he was also pushing for Commcare to move out of the premises, which move was expected in a few weeks. A date for the removal of the Hyperbaric Unit was also being awaited. Further noted was that the full development application permit for the relocation of the spectrometer had been submitted to the PA. The VGH representative specified that the insurance company was to visit the site shortly and hence it needed to be cleared as soon as possible. The VGH contractor Shapoorji advised that almost all the basement of KGRH had been cleared.
- 6.1.59 Following the presentation given by the VGH on 17 January 2017, the Chair HMC and HCC noted that the proposed FGI standards were to be accepted and that the VGH was to coordinate the amendment of its contract with the Government in this respect. Furthermore, 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.
- 6.1.60 Various other matters were also discussed during the meeting. The MFH representative noted that the X-ray files were expected to be removed in around seven weeks' time. Regarding the Xewkija Helipad, the Chair HMC and HCC declared that Gulfmed was to

shortly sign the contract and that flight operations were to be available soon. The Chair HMC and HCC also indicated that the POYC and the canteen at the GGH were in the process of being moved out of the premises. The VGH representative, on being asked about third-party experts, noted that medical-related design matters had been entrusted to PHI, technical design matters entrusted to Bureau Veritas, while FM Core were appointed as life cycle and maintenance auditors.

Meeting held on 24 February 2017

- 6.1.61 Another meeting of the Committees was held on 24 February 2017. Issues discussed included the permitting process, works and mobilisation, relocations, and other general matters. Of note was that this was the last meeting attended by a Projects Malta Ltd official due to a change in employment.
- 6.1.62 During this meeting, the Chair HMC and HCC advised that the permit for the Barts Medical School building had been approved and that works could commence on the site 28 days from the date of the permit decision. The VGH contractor Shapoorji indicated that the demolition could commence on 18 March 2017. Providing further information on the works, the VGH consultant IAS noted that the VGH would be providing a program on the works, which were expected to last a maximum of 12 months. It was noted that Malta Enterprise had settled for the Barts Medical School to operate from the Gozo Sixth Form during the interim period. An agreement had also been reached with the University of Malta regarding matters related to the Anatomy Department. The VGH contractor Shapoorji advised that Barts had agreed to all the designs supplied to them. The Chair HMC and HCC specified that a Projects Malta Ltd official would be investigating the status of a triangular pocket of land outside the perimeter of the GGH concession area, which land would supplement the Barts portion of the GGH site. Closing the discussion on matters related to permitting, the VGH consultant IAS noted that designs for the GGH were expected to be handed over to the VGH Contractor Shapoorji by March 2017.
- 6.1.63 Regarding works and mobilisation matters, the VGH consultant IAS advised that there had been no progress regarding the boiler house demolition and that the surveys to be submitted to the PA were being conducted. The IAS noted that it was to meet the SCH to discuss the issue further, and the Chair HMC and HCC requested to attend this meeting. The IAS also noted that the VGH had received the SLH schematics from Heery; however, changes were still to be made. No date had yet been set for the handover of the designs to the VGH contractor Shapoorji and a 3D survey of the SLH had to be commissioned. The IAS further noted that the environmental consultants ADI associates were preparing a waste management plan for ERA approval in relation to the chimney demolition. However, the boiler house had to be demolished before the chimney. The IAS also informed the Committees that a complete survey intended for the KGRH had not been successful since this hospital was operational and several difficulties had been encountered. A survey of the structure of the KGRH had not yet been carried out.

- 6.1.64 The relocation of several departments so that works could be carried out were amply discussed during this meeting. The CEO FMS noted that the CPSU was expected to vacate the building outside the SLH complex in two weeks. The VGH contractor Shapoorji was to submit a quotation to the VGH for the required refurbishment works by 1 March 2017. Following approval by the VGH, this quotation would be sent to the PSMFH for Government approval. The VGH consultant IAS stated that the SLH medical school had been stripped and that works to accommodate the Nursing School, Amputee Rehabilitation, Physiotherapy and the KGRH administration were expected to be completed in the last quarter of 2017, thereby facilitating the commencement of works at the KGRH. A Projects Plus Ltd official noted that Commcare was targeting to move out on 1 June 2017. Regarding the relocation of the spectrometer and the Chest Clinic, the MFH representative noted that permitting was still ongoing with respect to the former, and that the temporary relocation of the latter to the OPU, which option had previously been considered, was deemed unfavourable. Options considered for the temporary relocation of the Clinic were the Hyperbaric Unit and a part of the SLH Engineering Department building; however, also noted was that, ideally, the Clinic would remain where it was until a permanent relocation could be effected. The MFH representative stated that he was still working on the Sir Paul Boffa Hospital option for permanent relocation and awaited feedback in this respect. However, the VGH consultant IAS stated that the Chest Clinic had to be relocated in line with the completion of the Medical School works and related moves so that the SLH could be vacated completely.
- 6.1.65 Other general matters that the Committees were updated on were that the amendment to the contract with respect to the proposed FGI standards was still pending. An issue regarding the Gozo Detox location had arisen and the Chair HMC and HCC and the VGH consultant IAS advised that the agreement was being interpreted and discussed by the Government and the VGH to allow the matter to be resolved expeditiously.

Meeting held on 9 March 2017

- 6.1.66 A subsequent meeting of the Committees was held on 9 March 2017 and focused on the schematic drawings submitted by the VGH Consultant IAS on the proposed changes to be approved by the board regarding the GGH and the SLH.
- 6.1.67 In relation to the GGH site, the VGH Consultant IAS explained that there was a problem with the SCH, who had proposed the monitoring of all excavation works. The IAS explained to the Committees that the only excavations at that stage were the pilot holes to test the foundations and that he would clarify this with the SCH.
- 6.1.68 The VGH Consultant IAS also provided information on the SLH site and illustrated the possibility of demolishing a part of the building at the entrance to consolidate the area with the adjacent surrounding buildings. Schematics would have to be reevaluated if the building was to be demolished. The Chair HCC and HMC specified that detailed drawings

would follow, and that another board meeting would be called to sign the new schematic drawings including the proposed demolishing.

6.1.69 Noted in the minutes of the meeting was that the VGH Consultant IAS submitted booklets, including the discussed plans, to be signed by the present board members, and that copies of the booklets were being attached to the minutes. These booklets were not attached to the minutes made available to the NAO. However, the Chair HMC and HCC, in his capacity as the Chair of the latter committee, submitted a letter to the VGH consultant IAS on 9 March 2017, stating that the HCC had reviewed the floor plans for the GGH and the SLH and was signing off the plans as acceptable for the schematic design following approval by the PHI. The approval by PHI, formally submitted to the HCC, was dated 6 March 2017. Stated in the PHI's letter was that the approved floor plans, which floor plans were attached to the letter and provided to this Office, were to be developed further with the GGH and the SLH clinical and operational stakeholders as the projects moved to more detailed design in the subsequent phase of work.

6.1.70 Lastly, during the meeting, the Committees were informed that the PHI would be arriving in Malta later that month and that a board meeting ought to be held in their presence.

Meeting held 23 March 2017

6.1.71 The following meeting of the Committees was held on 23 March 2017. During this meeting, the VGH consultant PHI gave a presentation on the schematic drawings, and talks on progress of works, relocation and other matters ensued.

6.1.72 The PHI's presentation, which was not included with the meeting minutes made available to this Office, was noted in the minutes as providing an explanation and vision on the data acquired by the PHI on the flexibility, environment and management of modern hospitals. The main issues highlighted in this respect were the rehabilitation of the hospital to create additional soft spaces and further bed spaces for the future and future plans with regard to the KGRH in terms of intended additional cosmetic changes and renovations, an outdoor gym area and a larger therapeutic pool. Also highlighted was the fact that several teams had been engaged in the design process to hold face-to-face meetings to get first-hand information by the users. Furthermore, the work dynamics of the VGH and the PHI were explained and it was noted that additional international architects were in the process of being engaged.

6.1.73 Following the presentation, the Chair HMC and HCC specified that the SLH, the Chest Clinic issues and the CPSU relocation were to be prioritised. The VGH consultant IAS informed the Committees that measures were in place to address asbestos contamination concerns at the SLH. The VGH contractor Shapoorji noted that various structural tests were being carried out to certify existing structures. This was causing several concerns as such certification had never been granted before, hence requiring further studies and testing, potentially affecting timelines. The VGH consultant IAS also stated that once technical and structural data was collated on the existing structures, a meeting would be called to discuss this data. Furthermore,

certain clinics that were operational were to be cut off from the main building for works to commence. Regarding the Chest Clinic, the MFH representative stated that he would consult with the Ministry to find an adequate relocation solution.

6.1.74 On the GGH, a few concerns were raised, namely relating to the relocation of the POYC Department and access roads. However, it was stated that these matters were to be resolved.

6.1.75 The VGH consultant IAS also noted that talks were underway with the SCH as instead of demolition, it was recommending the retention and restoration of the boiler house, the kitchen and the psychiatric wing. The VGH consultant IAS stated that it was important that these structures were reused and incorporated in the new design. To create additional open space, the IAS was to work on a new proposal. The VGH would later contend that this request by the SCH bore a significant negative impact on the project and its budget.

Meeting held on 20 April 2017

6.1.76 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.

6.1.77 With respect to 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. The document would take 12 to 16 weeks to compile. Moreover, the enabling works for Gozo were complete, and discussions with Enemalta regarding service provision had been held. However, feedback on the proposed contract for the temporary relocation of the geriatric ward was still pending. The Ministry for Gozo was evaluating the request received, following a meeting with the VGH, for access to the Gozo school. Another issue was the overall height of the main hospital. When the local plan was approved the height specified should have been 16.3 metres. The hospital height as per the PHI's design was 24 meters. It was further noted that a 3D presentation was being prepared for submission to the PA.

6.1.78 With reference to the SLH, it was noted that the SCH had agreed that the psychiatric building and the kitchen could probably be demolished. Direction from the SCH regarding the boiler house was still awaited. Further noted was that the design of the medical school was underway, and the relocation of the amputee rehabilitation centre, physiotherapy and nursing school were agreed on. The target date for completion was December 2017. On the other hand, the stripping of the façade was still pending since no agreement had been reached between Shapoorji and the contractor. Furthermore, discussions between the FMS, the VGH and the MFH on the CPSU refurbishment necessary to relocate MFH entities were underway.

Concerns regarding the regularity of meetings held

- 6.1.79** Having reviewed the minutes of meetings held by the HMC, the HCC and the PMB, the NAO noted gaps 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.
- 6.1.80** 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 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 remained unclear to the NAO.

Reports submitted to the Committees

- 6.1.81** The SCA stipulated several reporting requirements that the VGH was to adhere to in connection with the works that were to be undertaken. The NAO requested copies of the reports that were produced by the VGH and submitted to the HCC and the PMB. While the reporting requirements relating to the HCC and PMB came into effect prior to the completion of the concession milestones, those with respect to the HMC were effective subsequent to the achievement of the milestones. Since none of the concession milestones were achieved, reporting in this regard was not applicable. More information on this important contractual failure is provided in paragraph 6.1.103. Aside from the reporting obligations of the VGH to the Committees, the SCA also stipulated reporting requirements that the PMB was to abide by.

Reports - Health Construction Committee

- 6.1.82** The NAO requested information relating to any reports delivered to the HCC in terms of the SCA. In response, this Office was provided with the presentation given to the Committees on 17 January 2017 regarding the FGI standards and the PHI experience (referred to in paragraph 6.1.51), the letter dated 6 March 2017 by the PHI to the Chair HCC, noting the PHI's approval of the drawings for the schematic design phase, and the drawings submitted therewith (referred to in paragraph 6.1.68).
- 6.1.83** Of grave concern to the NAO was that the requirement emanating from the SCA, elaborated on in paragraph 3.1.60 of this report, for the Concessionaire 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.

Reports - Project Monitoring Board

- 6.1.84 Similar requests relating to any reports produced by the VGH and delivered to the PMB in terms of the SCA were made by the NAO. This Office was once again provided with the presentation given to the Committees on 17 January 2017 (paragraph 6.1.51 refers) regarding the FGI standards and the PHI experience. Apart from this presentation, 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.
- 6.1.85 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, that titled 'Hospitals Concession Project Monitoring - General Status November/December 2016'. Details of this report were provided in paragraph 6.1.50 of this report. 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 of reporting on a regular basis as cause for concern.

Third party experts and Government experts

- 6.1.86 The NAO enquired regarding the appointment of third-party experts and if any reports or findings had been submitted. In this regard, the PS MOT replied that the only construction works carried out by the VGH were in relation to the Barts Medical School. The PS MOT informed this Office that oversight of this aspect of the project was entrusted to Malta Enterprise in view of the contract entered into between QMUL Malta and Malta Enterprise, in respect of which Malta Enterprise had always taken the lead role. Malta Enterprise set up a steering committee to project manage the development of the Barts Medical School. In this context, the PS MOT affirmed that the third-party experts envisaged in terms of the SCA were not required since QMUL Malta was the deemed expert in respect of the construction of the medical school.
- 6.1.87 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 for reasons elaborated on in paragraph 1.4.3.

6.1.88 This Office also enquired about the appointment of the Government experts that were envisaged in the SCA. In reply, the PS MFH noted that the contract was still in the transition period and that it was deemed reasonable to acquire feedback from the PMB until the construction project was initiated. Elaborating in this respect, the PS MFH stated that thereafter, Government would appoint its own experts for inspections.

Approval of engagement of subcontractors

6.1.89 The SCA also provided for the Government's prior approval for the engagement or employment of subcontractors appointed by the VGH. Despite requests submitted by the NAO to the MOT, no information regarding approvals sought or granted in this regard was provided.

Planning permits

6.1.90 To establish an understanding of progress registered in terms of the planning permits required for the execution of works in connection with this concession, the NAO referred to information available at the PA. This Office ascertained that three applications for planning permits were submitted by the VGH in the period under review, that is, from September 2015 until February 2018. The PS MOT informed the NAO that the VGH incurred approximately €2,500,000 in design costs; however, no supporting documentation was reviewed by this Office. Details corresponding to these planning applications ensue.

Planning Application 03134/16

6.1.91 On 24 May 2016, VGH Management Ltd applied for the restoration of the elevation of the main building within the SLH. A restoration method statement summarising the works to be carried out, which included the dismantling of accretions, the restoration of facades and the restoration of cast iron pipes and wrought iron railings, was submitted to the PA.

6.1.92 Consultations were carried out on the application. It was noted that the Design and Advisory Committee had no objection to the proposal, while the Heritage Planning Unit deemed the restoration method statement acceptable subject to certain conditions.

6.1.93 Noted in the Case Officer report published on 6 July 2016 was that the proposed development was found to be acceptable based on the positive feedback received from the Heritage Planning Unit. The Case Officer recommended the proposed development for approval subject to certain conditions, including monitoring by the PA at VGH Management Ltd's expense and the provision of a bank guarantee worth €2,300. On 2 September 2016, the Planning Commission (Development Permissions) approved the application and a full development permission was issued subject to the recommendations put forward by the Case Officer. On 21 November 2016, an addendum to the restoration method statement was submitted to remove a concrete canopy that was set up at the entrance to the Accident and

Emergency Department. These amendments were approved on 20 December 2016 and were incorporated in the previously approved plans.

Planning Application 05493/16

- 6.1.94 On 11 August 2016, the planning application bearing reference PA/05493/16 and corresponding to the construction of a medical school comprising three storeys and one receded floor was submitted by VGH Management Ltd. Described in the Case Officer's report was that the proposed medical school covered a footprint of approximately 2,400 square metres and a gross departmental area of 4,500 square metres.
- 6.1.95 The planning application was submitted to several stakeholders for review. Comments, specifically in relation to the conditions under which the project was to be carried out, were received from the Environment and Resources Authority (ERA), the Water Services Corporation, the Commission for the Rights of Persons with Disability (CRPD) and the SCH. The Superintendence of Public Health noted that the views of the Environmental Health Directorate were to also be sought. Transport Malta and the Design Advisory Committee indicated that they were not adverse to the project.
- 6.1.96 The Case Officer report concluded that the proposed development was acceptable as it was in line with the Strategic Plan for Environment and Development (SPED), and compliant with the objectives to meet Gozo's social and employment needs. In this respect the Case Officer noted that the medical school was listed as one of the needs associated with healthcare in a general policy relating to healthcare facilities in Gozo. Of note in the report was the reference to the decommissioning of the helipad at the GGH in view of the proposed project. The existing helipad on the GGH grounds formed part of the site where the medical school was being proposed. The Case Officer specified that the existing Xewkija helipad had been refurbished and was to be certified for use. Until such formal certification was attained, the decommissioning of the helipad at the GGH could not commence. During the Planning Board meeting dated 9 February 2017, the Chair and the Board members present unanimously voted in favour of the project. In view of this, full development permission was granted by the Planning Authority through a decision published on 15 February 2017.

Planning Application 07491/16

- 6.1.97 On 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 PA in preparation for the eventual submission of a planning application. The masterplan was to include major alterations, demolition and the reconstruction of parts of the hospital to increase the number of beds from 270 to 450. ERA reviewed a project description statement referred to it in this respect. On 19 January 2017, ERA concluded that an Environment Planning Statement was required as per the Environmental Impact Assessment

Regulations. VGH Management Ltd was therefore instructed to, within 30 days, submit its intention to carry out an Environment Impact Assessment and its estimated completion date. No further submissions were made during the period under review. The process continued around February 2020 with the submission of a revised project description statement based on which ERA submitted its initial comments in March 2020.

6.1.98 An element of context to that captured in the preceding paragraph may be warranted. Prior to this screening process, the GGH site was being discussed as part of a partial review of the Gozo and Comino Local Plan, which Plan was established in 2006. On 3 December 2015, a public consultation was launched with the objective of establishing an updated development framework for the GGH site. The consultation process closed on 18 December 2015, with no submissions received by closing date. Lateral extensions to the hospital through use of the open areas located inside the hospital grounds were envisaged. These extensions were deemed necessary to address health and community service needs in Gozo, including health tourism. Also considered were vertical extensions to allow for the development of additional floors at the GGH. Amendments were to be made to the general policy GZ-SOCF-3 and a new policy GZ-Rbat 11 was formulated to specifically address health-related services and facilities.

6.1.99 The partial review of the Gozo and Comino Local Plan was followed by a Strategic Environmental Assessment screening consultation process, with stakeholder feedback sought on 19 August 2016. ERA replied to this consultation document on 15 September 2016 wherein it raised concerns on the shift it had noted in the policy GZ-SOCF-3 in terms of the use of the Outside Development Zones (ODZ) in the area. In its submission to the PA, ERA noted that the 2011 version of the policy was against the use of ODZ for the location of new health-related facilities; however, the proposed policy revision was found to be categorically in favour of development proposals for the upgrading of local health facilities and related centres on ODZ land provided that the sequential approach in the SPED was followed. According to ERA, this shift in policy focus was of significant environmental concern and therefore strategically unacceptable from an environmental point of view. ERA also noted that no justification was given for this change in approach, and that the SPED Gozo Objective 1 did not identify the need for the comprehensive upgrading of local health facilities and centres across Gozo as a strategic priority. ERA also criticised the lack of review provided on the condition of the facilities or the need and demand of health facilities in Gozo. In its submission, ERA maintained that the lack of a strategic approach to the improvement of local health facilities and services alongside the proposed policy approach was likely to lead to ad hoc piecemeal developments since no definite strategy against which proposed developments could be assessed was available. In view of this, ERA was against any change in policy until a strategic assessment that provided a comprehensive review of the health facilities and the associated needs was undertaken. ERA also reviewed policy GZ-Rbat-11, which policy sought to accommodate Gozo's main hospital functions to one site by increasing the hospital's capacity and physical size on this site through new development, and vertical and lateral extensions to existing buildings. It was noted that the increased intensification of use and development on the site would bring about certain

impacts on the environment; however, ERA noted that these could be assessed in detail on submission of the development application. Nevertheless, several issues were to be considered during the design of the project, including the impact the project could have on the sloping ridge, the geology and hydrology of the area, the treatment of surface run-off water, and the use of green open spaces. ERA commented that the policy lacked consideration of green infrastructure which could result in several benefits such as green spaces, improved eco-system quality, development of ecological corridors, energy efficiency and aesthetic benefits.

Planning Application 09895/17

6.1.100 On 2 October 2017, VGH Management Ltd applied for the demolition of part of the GGH and for the building of stores. According to the Case Officer's report on the application, the new stores were to replace a building housing staff facilities that was considered as auxiliary to the main GGH building.

6.1.101 External consultations were held with several stakeholders. Transport Malta, ERA, the CRPD and the SCH replied to the PA as part of these consultations, presenting no objections. In the case of the CRPD and the SCH, the no objection granted was subject to certain conditions.

6.1.102 In a report dated 6 December 2017, the Case Officer concluded that the application could be recommended for approval subject to several conditions, including the development being subject to a final compliance certificate, together with clearance from the CRPD and a qualified engineer. The application was approved by the Planning Commission (Development Permissions) on 6 February 2018. The decision, through which development permission was granted, was issued by the PA on 7 February 2018.

Concession milestones

6.1.103 The SCA envisaged the achievement of several concession milestones by February 2018, which date represented the end of the period under review. The milestones that were to be achieved by this date 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); and the supply of 80 rehabilitation beds for the SLH (30 September 2017). The NAO established that, in the period under review, the only concession milestone that was achieved, albeit late, was that relating to the handover plan, which was submitted to the Government in June 2016. This understanding was confirmed in submissions made to this Office by the PS MFH, who stated that important construction milestones were repeatedly missed and no completion certificate was issued. Serious reservations regarding the feasibility of the concession milestones were expressed by the MFH representatives, 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. However, 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.

6.1.104 Failure to achieve the concession milestones by the VGH by the stipulated dates was classified as 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. In a meeting held with the NAO, the Negotiation Committee stated that the provisions regulating events of default were intended to safeguard the Government's interests. Elaborating in this regard, the Negotiation Committee noted that following the issue of the rectification notice, if the VGH could not rectify the defaults, the Government had the right to step in and take control of the management of the hospitals while the VGH would incur penalties for such defaults. Requests for information were submitted by the NAO to the MFH to ascertain whether any rectifiable concessionaire events of default were registered. The PS MFH informed this Office that a number of such events of default were identified and addressed through continuous discussions with the aim of seeking a way forward. Elaborating in this respect, the PS MFH indicated 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.

6.1.105 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 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 an allowance for a period of address of 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 (addressed in the ensuing paragraphs), 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 Government despite the failures of the VGH 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 granting 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.

- 6.1.106** 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 (as cited in paragraph 6.1.103) but now dependent on the issuance of the relative construction permit (as explained in paragraph 4.10.13). 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.
- 6.1.107** In submissions to the NAO, the Minister for Health referred to the two DNOs that had been issued but were subsequently revoked and highlighted that the timeframes stipulated for the completion of concession milestones were, through the Addendum to the SCA, rendered contingent on the issuance of the relevant planning permits, hence resulting in a standstill. The Minister for Health referred to legal advice obtained, wherein he was informed that the contingency of the milestones on the planning permits rendered the VGH as not in default of its obligations. Moreover, the Minister for Health cited another point raised by the legal advisors in that the waivers being granted to the VGH with respect to its financing of the project implied that there was no default in this regard either. 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 impotent in ensuring their achievement.
- 6.1.108** 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.

6.1.109 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 are 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.

Nursing college

6.1.110 Aside from the concession milestones, another requirement of the SCA related to the nursing college that was to be set up. Specifically noted in the SCA was that if the operation of the nursing college was outsourced, then the concessionaire was to consult with the Government prior to the appointment of the third-party operator. Following queries raised, the MFH, through consultation with Malta Enterprise, informed the NAO that an agreement in this respect had been entered into. While the agreement was submitted to the NAO, this Office was not provided with correspondence rendering evident the consultation that ought to have taken place between the VGH and the Government. The agreement relating to the nursing college was entered into between the VGH and MCAST on 16 January 2017 and was valid for three years from its signing. The VGH was to provide the nursing training and simulation facilities at the VGH campus at the SLH. The nursing college was to accept its first cohort/s of student trainees in September 2017. The facilities were to accommodate one new cohort of 30 students in each year, for a three-year period.

Insurance cover

6.1.111 Another matter that the NAO enquired on was insurance cover. In submissions to this Office, the MFH confirmed that the required insurance cover was obtained and renewed by the VGH in accordance with the SCA throughout the period under review. A summary of the types of insurance issued together with the period of cover, limits of liability and insured parties is presented in Figure 15.

Figure 15 | Insurance cover schedule

Policy type	Period of cover	Sum insured / limit of liability	Insured parties	Government as an additionally insured party
All Risk Physical Loss or Damage Policy	19.05.16 - 18.05.17 01.07.17 - 30.06.18	€315,180,000 Each and every loss, excess of deductibles Declared Values: Property Damage €255,180,000 Business Interruption €60,000,000	Vitals Global Healthcare Limited &/or Vitals Global Healthcare Assets Ltd &/or Vitals Global Healthcare Management Ltd.	Yes
Contract Works, Third Party Liability and Delay in Start up	19.10.16 - 31.12.18	Contract Works €220,000,000 Contractors Plant and Equipment €2,068,500 Third Party Liability €2,500,000 Delay in Startup €36,000,000	Vitals Global Healthcare Ltd.	Yes
Employers' Liability	20.05.16 - 19.05.17 20.05.17 - 30.06.17 01.07.17 - 30.06.18	€2,000,000 any one occurrence and unlimited in the aggregate	Vitals Global Healthcare Ltd. &/or Vitals Global Healthcare Assets Ltd &/or Vitals Global Healthcare Management Ltd. And/or Steward Healthcare Malta and/or Steward Healthcare International LLC and/or their respective affiliated and/or subsidiary companies each for their respective rights and interests	Yes
Medical Professional Liability, Public Liability and Products Liability	19.05.16 - 18.05.17 19.05.17 - 30.06.17 01.07.17 - 30.06.18	€5,000,000 (Limit of indemnity) €5,000,000 each and every claim including Defence Costs for Medical Professional Liability, Public Liability and Products Liability combined. €10,000,000 in the annual aggregate including defence costs for all coverages combined. Subject to an excess of €50,000 for each and every claim, including defence costs.	Vitals Global Healthcare Limited &/or Vitals Global Healthcare Assets Ltd &/or Vitals Global Healthcare Management Ltd. &/or their associated &/or affiliated &/or subsidiary companies each for their respective rights and interests	Yes

Business Select Accidental Damage Bronze policy (Helicopter Flights)	24.07.17 - 23.07.18	€100,000	Vitals Global Healthcare Ltd &/or Steward Healthcare Malta &/or Steward Healthcare International LLC and each for their respective rights and interests	No
Terrorism and/or Sabotage	16.11.17 - 16.11.18 Cancellation with effect from 16.01.2018	€345,180,000 per occurrence and in aggregate per period (Including Property Damage €255,180,000 And Business interruption €90,000,000)	Vitals Global Healthcare Ltd and/or Vitals Global Healthcare Assets Ltd and/or Vitals Global Healthcare Management Ltd each for their respective rights and interests.	Yes
Master Terrorism Facility	01.01.2017 - 1.12.2017 01.03.2017 - 28.02.2018	Sum insured / limit up to USD 500,000,000 any occurrence	Vitals Global Healthcare Ltd and/or Vitals Global Healthcare Assets Ltd and/or Vitals Global Healthcare Management Ltd each for their respective rights and interests.	Yes
Public Liability (Storage of LPG Gas)	11.01.17 - 11.01.18	€1,500,000	Vitals Global Healthcare Limited &/or Vitals Global Healthcare Assets Ltd &/or Vitals Global Healthcare Management Ltd. &/or subsidiary companies and/or Associated Companies each for their respective rights and interests	No

6.1.112 Hereunder are the salient points of observation that emanated from the NAO's review of the insurance policies entered into as required in terms of the SCA.

- a The first requirement entailed that the Government was to be joint-insured with the VGH. This requirement was adhered to in all insurance policies, with the exception of the Business Select Accidental Damage Policy (Helicopter flights) and the Public Liability Policy (Storage of LPG Gas).
- b The second requirement was that VGH Assets Ltd was to be included as having an insurable interest in the policies issued. This requirement was not satisfied for the

insurance policies issued for the Contract Works, Third Party Liability and Delay in Start-up Policy and for the Business Select Accidental Damage Policy (Helicopter Flights).

- c A further requirement was for the insurance cover to contain a provision waiving the insurer's subrogation rights against the Government and any of its staff except in the case of gross negligence and/or wilful misconduct. This requirement was adhered to in all the insurance policies save the Public Liability Policy (Storage of LPG Gas).
- d The requirement for the provision of 'Indemnity to Principals' was satisfied in the Employers' Liability Policy and the Medical Professional Liability, Public Liability and Products Liability Policy.
- e The requirement for a non-vitiation provision, providing that the insurances shall not be voided or invalidated against Government and the staff, by anything done or not done by the VGH or any other insured party, except in the case that they have committed, condoned or collaborated to such action legally to the validity of the policy, was covered by each policy issued. This could not be confirmed in the case of the Business Select Accidental Damage Policy (Helicopter Flights) and the Public Liability Policy (Storage of LPG Gas) due to the limited documentation provided for these policies.
- f A further requirement was for the insurance cover to provide that each insurance policy insuring the rights and interests of more than one party operated in the same manner as if it were a separate policy, covering each insured separately. Following a review of the policies held, this Office noted that this cover was not satisfied in the All Risk Physical Loss or Damage Policy, the Terrorism and/or Sabotage Policy and the Public Liability Policy (Storage of LPG Gas).
- g The SCA also stipulated that cover relating to damage to the Sites and assets, should cover the same for the reinstatement value at each policy renewal date plus 10 per cent, with this being covered by the All Risk Physical Loss or Damage Policy.
- h The requirements for the insurance to include employers' liability; clinical negligence; public liability and professional negligence with limits to be mutually agreed by the parties; and for the insurance cover to be maintained with reputable insurers licensed to or authorised to write insurance business in the EU or European Economic Area countries, were also satisfied in accordance with the terms of the SCA.

Concession fee

6.1.113 The SCA stipulated a concession fee of €3,000,000 that was to be paid by the VGH in equal payments over ten years, with the first payment to be made after the effective

date. The NAO confirmed that regular quarterly payments were made by the VGH from the effective date in accordance with the SCA. A total of €550,000 was paid during the period 1 June 2016 to 31 March 2018, as indicated in Figure 16.

Figure 16 | Pro-rata payments of the concession fee by the VGH

Period	Amount paid (€)
1 June 2016 – 30 May 2017	300,000
1 June 2017 – 31 March 2018	250,000
Total	550,000

Financing agreements

6.1.114 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. The first waiver provided by Government was dated 19 May 2016, through the Side Letter to the Transaction Agreements, granted on condition that a fully executed copy of the Financing Agreements was to be provided by the VGH by 19 February 2017.

6.1.115 Further extensions to this waiver were granted through the execution of two Side Letters to the SCA, dated 14 February 2017 and 23 June 2017, whereby the Government accepted to extend the waiver to 30 June 2017 and 31 December 2017, respectively. The extension emanating from the Side Letter dated 14 February 2017 was granted on the premise that VGH Assets Ltd were understood at the time to have been in the advanced stages of closing the financing transactions, while the extension afforded through the 23 June 2017 Side Letter was granted on the consideration that circumstances beyond the VGH's control rendered it impossible for the Concessionaire and its financiers to achieve financial close by June 2017. The final extension during the period under review was dated 29 December 2017, whereby Government afforded the VGH the possibility to submit evidence that the financing agreements were in place until 5 March 2018 or one month post the expiry of the conditional share sale and purchase agreement, considering the imminent share transfer. The share transfer referred to in this context was that of the shares of the VGH to Steward Healthcare International Ltd. All these extensions were approved by Cabinet.

6.1.116 In submissions to the NAO, the Minister for Health noted that the successive extensions authorised by Cabinet indirectly endorsed the delays in works, which works could only commence once the VGH secured financing. The MFH representatives 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. 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 were all indicators of its dire situation. The Advisor MFH noted that no action was taken despite clear provisions in the Companies Act with respect to companies who failed to pay VAT, their privileged creditors or that were insolvent, and other provisions in the Public Procurement Regulations stipulating that a contract becomes null and void if the concessionaire was insolvent. The MFH representatives indicated that the Ministry did not pursue the course of action that would have led to the termination of the contract on grounds of insolvency because the Court did not declare the VGH as insolvent. Regardless, the MFH emphasised that seeking the termination of the contract in this manner was not within the Ministry's remit, as its focus was on ensuring the continuity of the services sourced from the VGH. Moreover, 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. The PS MFH also highlighted the €100,000,000 liability payment in case of a non-rectifiable event of default as an additional barrier to terminating the contract.

6.1.117 The inability to secure financing by the VGH 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 allowed for waiver after waiver of 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 (these shortcomings are elaborated on in Part 1 of the Report). 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.

Parent company guarantee

6.1.118 Another requirement of the SCA related to the VGH's provision of a parent company guarantee. On request for documentation in this regard, the MFH confirmed that a parent company guarantee was provided by Bluestone Special Situation 4 Ltd on behalf of the VGH, which guarantee was dated 19 May 2016 and was in accordance with the form and structure as set out in the SCA. On review, the NAO noted that the maximum amount payable by the VGH to the Government under this guarantee was set at €3,000,000. In

submissions to this Office, the PS MOT stated that the parent company guarantee did not constitute a capping on the maximum liability payable by the Concessionaire. Noted was that, typically, in limited non-recourse financing projects, the financing and operation of such concessions was not based on balance sheet financing but solely on the merits of the project. A similar perspective was put forward by the Negotiation Committee.

- 6.1.119 The PS MOT specified that, notwithstanding the explanation provided, the interests of Government were safeguarded through the performance guarantee which amounted to €9,000,000, equivalent to 45 days of revenue generated by the VGH from Government. The PS MOT also noted that the terms and conditions of the financing of the project were subject to approval by the Government and that it was typical in project finance transactions for banks to require the Concessionaire to maintain a number of covenants, one of which would be to retain a minimum equity level to be forfeited in favour of the Government in the event of a concessionaire event of default.
- 6.1.120 Further concerns regarding the parent company guarantee were highlighted by the MFH in that the Ministry's attention was drawn to the fact that the share capital of Bluestone Special Situation 4 Ltd, that is, the parent company, was a mere €1,200. The MFH 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.

Other conditions precedent for the achievement of the effective date

- 6.1.121 Several of the conditions precedent required for the achievement of the effective date were addressed in other parts of this Report. Those relating to the performance guarantee, the financing agreements, the insurance policies, the contract with the EPC contractor and the handover plan have been addressed in the preceding paragraphs, while those relating to entry into the HSDA and the Emphyteutical Deed were addressed in earlier sections of this Report. Other conditions precedent that were met and on which the NAO has no adverse comment include that relating to the register of members and directors and the VGH's memorandum and articles of association. Hereunder are the remaining conditions precedent in relation to which this Office noted some concern.
- 6.1.122 The condition precedent relating to the requirement for the VGH to provide the Government with an extract of a fully executed shareholders' resolution authorising the signatories to the Agreement was deemed satisfied and accepted through the provision of directors' resolutions in replacement of the required shareholders' resolutions. On requests submitted by the NAO to Projects Malta Ltd and the MOT as to whether shareholders' resolutions had been submitted to the Government, this Office was informed that the requested documents were not held by Projects Malta Ltd. The PS MOT advised that directors' resolutions had been accepted on the premise that the content of the agreements had been ratified by the signatories of the resolutions for the shareholders of VGH Ltd, VGH Management Ltd and

VGH Assets Ltd. The NAO is of the understanding that for a directors' resolution to be accepted as a replacement of the shareholders' resolution, the Government should have been in receipt of a shareholders' written consent either waiving their right or allowing the directors to appoint the signatories in their stead. The required documentation remained outstanding, prohibiting the NAO from verifying whether this condition precedent was satisfied.

6.1.123 Another condition precedent that drew the NAO's attention was the VGH's obligation to provide a written declaration that there were no events of default in existence at the time of execution. This condition precedent was marked as satisfied in the Side Letter to the Transaction Agreements dated 19 May 2016. However, despite requests made by the NAO, a copy of this document was not provided to this Office, thereby limiting verification. Projects Malta Ltd confirmed that it could not retrieve this document from its files.

6.2 The implementation of the obligations arising from the Health Services Delivery Agreement and its addenda

6.2.1 On the effective date, VGH Management Ltd assumed control over the operations of the GGH, the KGRH and the SLH. 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 development works completed. 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 frame of reference was that prior to the completion date, which consideration limited this Office's enquiries to those obligations applicable within this period. For ease of reference, this period is referred to as the transition period. It must be noted that, although the completion date was to be achieved by 31 December 2018, at the time of reporting, that is, December 2021, this had not yet been realised.

Addenda to the Health Services Delivery Agreement

6.2.2 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. Of concern to the NAO was the significant nature of the changes being effected in this respect. 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 sought to understand what triggered the need for these Addenda, particularly when one considers their proximity to the entry into the HSDA.

- 6.2.3 In response to queries raised, the PS MOT informed this Office that this need emerged during discussions with stakeholders, wherein it became apparent that Government required more beds and services than those originally stipulated in the RfP and included in the original contract. The PS MOT further elaborated that during the period between the issue of the RfP until the finalisation of the Transaction Agreements, the MEH, through its regular meetings, highlighted the need for such increased beds and for the changes in services. Elaborating on this matter, the PS MOT contended that the VGH's return on investment on the beds allocated to Government was limited and the overall viability of the project largely depended on the success of medical tourism. The PS MOT further noted that, since the stakeholders considered the price structure set by the VGH as comparable to that of the MDH, the Government deemed it opportune to secure an additional 100 beds. However, according to the PS MOT, the VGH's capability to generate additional revenues from medical tourism was curtailed when Government prioritised local health service provision over the development of medical tourism initiatives. This meant that for the project to remain viable, the capital budget had to be reduced. Nevertheless, the PS MOT indicated that he was not involved in the evaluation carried out with respect to these changes and reiterated that Cabinet's attention had been drawn to the Addenda.
- 6.2.4 That stated by the PS MOT was corroborated by the Negotiation Committee. The CEO BEAT Ltd and Partner RSM, Chair and Member of the Committee, respectively, argued that it was the MEH-Health, through the CEO GGH and the CEO KGRH, and possibly other health experts, that negotiated the Addenda.
- 6.2.5 Of concern to the NAO was that, in a meeting held, the CEO GGH and the CEO KGRH denied any involvement in the process leading to entry into the Addenda. Moreover, the CEO GGH and the CEO KGRH depicted a dire situation in that the concession agreements that they were responsible to implement were neither provided to them by the MFH when they were public sector employees, nor later by the VGH when employed directly by the Concessionaire.
- 6.2.6 Elaborating further on the rationale behind the reduction in services and increase in beds allocated to Government through the Addenda, the CEO BEAT Ltd and the Partner RSM argued that certain services were removed to compensate for the additional beds allocated to Government, as this increase in beds reduced the availability of beds for medical tourism and hence the VGH's profit.
- 6.2.7 The MFH's perspective on the matter starkly contrasted with that of the Negotiation Committee. In this regard, the MFH maintained that the Ministry was never consulted on these changes and that the Addenda served the VGH's interest by increasing the number of beds for which Government was to be charged and simultaneously reducing the services that it was obligated to provide. In sum, the MFH argued that, through the Addenda, the VGH was to be paid more for less, to the detriment of Government.

- 6.2.8 Notwithstanding the serious reservations raised by the MFH regarding the value for money secured by Government through the Addenda, the Ministry did concede that certain services cited in the original HSDA posed a challenge to implement. The difficulty in implementation mainly involved constraints in terms of labour supply to be sourced and deployed at the GGH. Expanding on this point, the Consultant MFH explained that no technical expert was willing to be deployed at the GGH to practice a specialist service, for the throughput of patients that would require such a service was too low to sustain one's expertise. The Consultant MFH indicated that the concession would have been better designed had provisions been made for specialists based in Malta to occasionally provide services at the GGH, citing interventions relating to hernias in children as an example, thereby improving the medical service provided in Gozo while retaining sufficient practice to maintain expertise. In addition, the Consultant MFH referred to the possible use of the GGH as a contingency hospital for the MDH, useful in circumstances when parts of the MDH would require closing off due to contamination. According to the MFH, the concession was flawed in its design for it served to isolate the GGH from the MDH, which in turn resulted in a greater strain on Government's system and efforts to distribute resources effectively. The MFH further elaborated that the labour supply constraints had not been noted prior to entering into the concession agreement, with the situation coming to the fore following the separation of the hospital management from the national health service.
- 6.2.9 The challenges highlighted by the MFH were corroborated by the CEO GGH and the CEO KGRH, who noted the difficulties faced when operating in an environment characterised by a silo mentality, with factionalisation becoming even more pronounced with the privatisation of the hospitals.
- 6.2.10 In sum, the Addenda to the HSDA, entered a mere week after the signing of the HSDA, resulted in a significant reduction in services and an increase in the number of beds to be made available to the Government. 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. While the NAO noted the consensus that it was reasonable to remove these services on technical grounds, for the context of the GGH did not allow for their sustainable provision, this revision casts doubt on the process employed to identify the health services sought through this concession.

Service delivery, quality and performance standards

- 6.2.11 Having addressed Government's entry into the Addenda to the HSDA, the NAO's attention is now directed towards obtaining an understanding of whether the provisions in the HSDA regulating the delivery of health services were complied with. Aspects of interest

in this respect comprised whether the services delivered were in line with those stipulated in the contract and whether provisions in the contract in relation to quality and performance standards were observed. Of interest in this respect were the minutes of meetings of the QAB and the KPI reports provided to this Office.

The Quality and Assurance Board

- 6.2.12 The HSDA provided for the setting up of a QAB, which was to meet, at a minimum, on a monthly basis and be responsible for the oversight, direction and overall monitoring of the performance of VGH Management Ltd in terms of the service levels to be provided, the Government's requirements for the services, and the KPIs as outlined in the HSDA. Also noted in the HSDA was that the Board was to be responsible for the overall monitoring of the charges due and payable by the Government to VGH Management Ltd for the provision of the services. According to the MFH, the Board was to analyse the quality and quantity of output through monthly and quarterly reports. The QAB was to include three representatives of VGH Management Ltd, of which at least two were to be experts in the field of medicine; one representative of the Government; and one representative of QMUL Malta.
- 6.2.13 The QAB was set up, with monthly meetings held from September to December 2017. In replies to queries in relation to the QAB, the MFH noted that the members of the Board were a Barts and the London School of Medicine and Dentistry professor, the CEO GGH and the CEO KGRH, and the former clinical director of the MDH in representation of the MFH (referred to elsewhere in this report as the Consultant MFH). In submissions to this Office, the Minister for Health noted that he had appointed the Consultant MFH to the Board. No conflict of interest declarations corresponding to the Government-appointed Board members were provided to the NAO following a request made to the PS MOT. Further noted was that several meetings were also attended by the VGH officer responsible for quality assurance and/or the VGH COO. The NAO ascertained that the VGH Head of Quality and Patient Safety attended the four meetings held by the QAB prior to the transfer of the concession to Steward Health Care in February 2018. In submissions to this Office, the MFH noted that soon after the announcement of talks regarding the transfer of shareholding in the VGH, the Chair QAB stopped calling meetings. However, during this period, a few technical meetings were held between the Government and the Concessionaire. Meetings of the QAB recommenced in May 2018.
- 6.2.14 Positively appraising the work carried out by the QAB, the Minister for Health noted that the Board flagged any arising concerns and ensured that action was taken in response. The Minister for Health further stated that, during the first year of the concession, the QAB addressed long-standing issues at the hospitals. Elaborating in this respect, the Minister for Health cited two examples. First, the shift of the GGH from a cottage hospital run by a resident medical officer, with no medical consultants providing services therefrom, to a fully-fledged hospital employing various medical consultants and having an emergency care unit. Second, the upgrading of the OPU within the SLH from a room situated in the basement of the hospital to an entirely new set-up in a renovated wing. According to the Minister for Health, the work

of the QAB resulted in certain improvements in service at the GGH and to a lesser extent at the KGRH. In submissions to this Office, the CEO GGH acknowledged the improvements registered through the work of the QAB, specifically referring to developments registered in terms of the quality parameters in place at the two hospitals.

Meeting of the Quality and Assurance Board held on 25 September 2017

6.2.15 The first meeting of the QAB, wherein the Board was established, was chaired by the VGH CEO and was held on 25 September 2017. It was agreed that the VGH CEO would continue chairing the meetings until the Boards' Charter was agreed. During the meeting, it was noted that the VGH Head of Quality and Patient Safety and a PHI official were working on an annual report about QuIPs. The VGH CEO further noted that the Board would be an independent body and would provide governance and direction in the form of KPI setting and monitoring. The VGH would then be responsible and accountable for actions taken and/or planned. The Board would report to the MFH, the Barts Medical School, the VGH and Projects Plus Ltd and would be accountable to the Government and VGH Management Ltd.

6.2.16 KPI setting and benchmarking were also discussed during the first meeting of the QAB. KPIs were to be drawn up for the short, medium, and long term. The Consultant MFH recommended the use of the Agency for Healthcare Research and Quality's benchmark data. Agreed during the meeting was that KPIs were to include recruitment of middle grade doctors at the GGH to ensure that the structure no longer depended on consultants being first on call and general practitioners working as residents. The VGH CEO committed to provide short, medium, and long term KPIs prior to the subsequent meeting of the Board. He advised that there already existed committees dealing with the hospitals' KPIs. Finally, it was noted that the Board's structure and charter would be discussed and approved during the following meeting.

Meeting of the Quality and Assurance Board held on 23 October 2017

6.2.17 The following meeting of the QAB, held on 23 October 2017, was chaired by the Barts Medical School representative. A discussion to establish the QAB Charter took place. It was indicated that the Charter was to be valid for a year.

6.2.18 Further discussion related to feedback from visits to the sites granted to the VGH. In this respect, it was noted that the Consultant MFH would be reporting to the Minister for Health monthly, and that he had already reported favourably on the 'efforts' at the sites to the Minister for Health and the PS MFH. The Minister for Health had asked the Consultant MFH to ensure that there was no breach of the concession agreement through standards falling backward, and that the improvement registered continued.

6.2.19 Discussions during the meeting also centred on the level of reporting detail, equipment for the sites, and progress on the works being carried out. In this respect, the CEO KGRH noted that works were not on target to finish by the end of 2017 and the Consultant MFH requested a progress report on the matter. It was additionally noted that the QuIPs report was going to be discussed by the Consultant MFH with the Minister for Health. Regarding reporting, the CEO GGH noted that there was little infrastructure to report until the new IT system went live and that this had been discussed with the Quality Managers. The Chair noted that there would be a period of debate on the reporting parameters to ensure that these were satisfactory to the Minister for Health. On a request by the VGH Head of Quality and Patient Safety for data or a list of indicators, the Consultant MFH stated that he had already provided what was being done at the MDH and advised that the VGH was expected to work to these levels. The Consultant MFH requested that the data that was available be presented during the next QAB meeting. Regarding the KPI measures in the concession agreement, the Consultant MFH asked for the definition of certain terms included in the KPIs. The Consultant MFH suggested a comparison of the equipment specifications outlined in the RfP and the equipment purchased or rented by the VGH to date. He also expressed concern on the service level in Gozo in comparison to Malta. The CEO GGH agreed, noting that recruitment was ongoing and that a dialogue on rotation needed to commence with the MDH.

Meeting of the Quality and Assurance Board held on 20 November 2017

6.2.20 The third meeting of the QAB was held on 20 November 2017. During this meeting, the Board approved the QAB Charter. The Charter, made available to this Office, provided the general principles of the Board, including its structure, organisation and functions. Noted was that the Board's co-chairs were the Consultant MFH and the representative of the Barts Medical School. The VGH Head of Quality and Patient Safety was also listed as a member of the Board, along with the CEO GGH and the CEO KGRH.

6.2.21 Discussion during this meeting also revolved around several quality-related matters, including the fact that quality improvement initiatives at the GGH and the KGRH were allegedly limited due to lack of staff and data collection limitations. While the Consultant MFH commended the move to Joint Commission International (JCI) standards, he stressed that KPIs should not be ignored and that the standards needed to be better than the levels registered as at 2014 at the GGH and the KGRH, and the standards at the MDH. Further noted during the meeting was that data at the MDH was collected manually, therefore the fact that the VGH IT system was not yet functional was not to be used as an excuse for data not being collected. The CEO GGH noted that there had been issues at the GGH when it fell under the Ministry of Gozo. The GGH was working towards KPIs but could not change overnight. The minutes of this meeting also stated that there was to be a move to agree to a timetable that would satisfy the Government.

- 6.2.22 The Consultant MFH also stated that Government had noted around 60 breaches of the concession agreement. On the matter, the Chair QAB concluded that while there was enthusiasm from the VGH, the Consultant MFH's points were valid and there was a point when inadequacy became unacceptable. It is important to note that the HSDA stipulated that if, following receipt of the minutes of the QAB, the Government perceived a breach of any of VGH Management Ltd's obligations under the HSDA, the Government was to notify the QAB of the perceived breach and could require VGH Management Ltd to provide submissions related to the perceived breach. Where VGH Management Ltd accepted the breach, a rectification programme was to be submitted to the Government and the QAB. In reply to queries submitted by the NAO in this respect, the MFH noted that no such breach was ever perceived. However, the MFH noted that concerns regarding the unavailability of the helicopter emergency medical service were expressed. The VGH had made arrangements with the Armed Forces of Malta to cover planned maintenance and assured the Government that efforts to provide back up in instances of unplanned breakdowns were being made.
- 6.2.23 Also discussed during the meeting was the fact that the Government had not provided the agreed number of buildings to the VGH. However, the Consultant MFH stressed the need for data to reassure Government. The VGH Head of Quality and Patient Safety advised that she was working with both hospitals and their medical records committees. The initial task was to align data with the MDH and confirm which KPIs were applicable. This list was to be available by the end of November. The CEO VGH commented that she was comfortable with this approach and that the VGH Head of Quality and Patient Safety should collect KPI at diagnosis level, eliminate the ones which did not apply and then start to collect data, manually if necessary, until the system became automated. The Consultant MFH also commented on specialists and residents within the GGH and the need for a better team. He was to speak to the Minister for Health on the matter on 7 December 2017. The CEO GGH agreed and advised that the current schedule had been reviewed, including gaps. The GGH would be advertising for residents and calling for expressions of interest for rotation to the GGH for three or six months. The GGH needed residents to achieve teaching hospital status. Action to be taken in this respect was the escalation of residents at the GGH through VGH internal leadership.
- 6.2.24 The requirement for operational policies for certain wards and units were also discussed during this meeting. Particularly, it was noted that policy development was the first and most important step for the JCI. The Chair concluded that multiple sources of observation lead to care improvement and that the JCI would be one of them. The Consultant MFH warned that the JCI included little mention of KPIs but that the UK system was mainly KPI-based and that the objective should be to find a combination of both.

Meeting of the Quality and Assurance Board held on 12 December 2017

- 6.2.25 The last meeting of the QAB prior to the transfer of the concession to Steward was held on 12 December 2017. During this meeting, two representatives of the GGH were present

instead of the CEO GGH. In relation to the action to be taken regarding the escalation of residents at the GGH through VGH internal leadership, the Consultant MFH commented that the Minister for Health was not against having doctors train in Gozo, but issues arose in terms of agreement with unions and the fact that when senior doctors have residency and family in Malta, moving to Gozo was not as attractive. A clear way forward on the matter was still required. In the minutes, the action was noted as still to be completed.

6.2.26 Also noted during the meeting was that KPIs were finalised for both hospitals. The VGH Head of Quality and Patient Safety advised that the KPIs had been developed with input from both hospitals and considered how data would be collected until the IT system was in place. Once the list was finalised there would be a form or template created to collect data. This process could start as early as January 2018. The Consultant MFH requested a few modifications to the clinical performance indicators. It was noted that the KPIs relating to the first quarter of 2018 would be reported to the QAB at the end of April 2018.

6.2.27 Another matter discussed during this meeting was the monitoring of theatre output. The Consultant MFH expressed concern with respect to the measurement of theatre time being utilised by the GGH under the agreement, which was capped at 3,300 hours. It was agreed that the 2014 data in the agreement would be reclassified to minute by minute format as opposed to the current format wherein 10 minutes or 29 minutes would be classified as 30 minutes. The Consultant MFH contended that this could affect the sufficiency of the 3,300 hours of theatre time stipulated in the concession agreement and the matter could be discussed once the data was converted.

6.2.28 Several other matters were discussed during this meeting, including waiting lists and services at the GGH. It was noted that waiting list data at the GGH was going to be reported during the following meeting. The care of renal patients on dialysis was also discussed, with the Consultant MFH stating that he wanted the VGH to provide a renal service in Gozo quarterly. A GGH representative advised that renal treatment is allocated in the budget for 2018. The CEO VGH suggested a meeting with the GGH representatives so that a timeline be presented at the subsequent QAB meeting. The provision of ophthalmic services in Gozo was also discussed. The GGH representative specified that a provision for ophthalmic services was included in the budget for 2018, and the Consultant MFH suggested using a locum. The GGH representatives were to provide an update in this respect during the next meeting. The development of urology services in Gozo was also discussed. The Consultant MFH advised that he had learnt that the urology equipment had been delivered to the GGH. However, it was not being used due to lack of staff. The Consultant MFH requested that VGH management supported the VGH clinical team in solving issues. The CEO VGH and the GGH representatives were to decide on the way forward and report on the matter during the following meeting. Further noted was that a requested report on epidural services and pain relief during labour in Gozo would be presented at a later date, and a service report on the provision of prosthetics would be presented during the following meeting. The Consultant MFH also indicated that the unspecific job descriptions used in recruitment adverts were not being fully understood

by international applicants. The CEO VGH commented that recruitment was not a fast process due to many factors, including notice periods. Acknowledging the constraints faced, the Consultant MFH further noted that the Government was asking the VGH to solve problems that it could not solve itself. Updates on GGH staffing developments would be provided in subsequent meetings of the Board.

Key Performance Indicators

- 6.2.29 Another oversight tool provided for in the HSDA was the setting up of KPIs to monitor clinical performance. In submissions to the NAO, the Negotiation Committee stated that the KPIs included in the contractual framework were set at the level of the best of either the European norms or those in place at the MDH. The Negotiation Committee emphasised that due to the KPIs, the VGH was obligated to invest in technology to elevate the level of services it provided to the standard required. Furthermore, if the required outputs were not attained, the contractual framework provided for the imposition of a service credit mechanism as a penalty. A contrasting perspective was provided by the Consultant MFH, who 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.
- 6.2.30 The HSDA established KPIs to be implemented for 2018, referred to in this report in paragraph 3.2.102, with the targets to be achieved through the KPIs meant to be utilised as the basis to calculate KPIs for subsequent years. Through the HSDA, the Government and VGH Management Ltd agreed to identify and establish KPIs annually from 2019, that is, following the intended completion date of the project. The MFH informed the NAO that progress made throughout the transition period was being monitored through activity reports, and further noted that service levels were being monitored by an internal ministerial team led by clinicians through the review of several key clinical performance indicators. The MFH noted that the same team monitored ancillary services and worked towards ensuring their set up. Correspondence exchanged between the Minister for Health and the Consultant MFH, wherein updates were provided on progress registered, was submitted to the NAO to substantiate that stated by the MFH. During the transition period, the clinical performance reports documented the desired service levels comparable to levels achieved at the MDH. Also noted was that clinical performance reports covered over 90 per cent of all the KPIs and were delivered every three months, with the end-of-year report including an analysis of the previous year.

- 6.2.31 The PS MFH noted that in the post-contract award phase, the MFH strived to implement the contract with respect to the operational elements in the best interest of the patient and the taxpayers. Elaborating in this respect, the PS MFH referred to the structures of oversight utilised and to the lengthy discussions with the VGH, with the Ministry considering the registration of legal disputes on certain matters.
- 6.2.32 In submissions to the NAO, the Minister for Health noted that the VGH retained the same hospital management personnel, and that this allowed for consistency in clinical operations. In this respect the Minister was confident that the service quality was maintained and even improved. However, the improvement was stunted due to lack of progress in terms of the refurbishment and infrastructural development. In this context, the Minister for Health stated that he had set up another committee, additional to those stipulated in the contractual framework and that cited in the preceding paragraph (whose focus was clinical), with the objective to monitor the concession and progress registered, advise on the VGH's operations and flag arising matters. Elaborating on the latter objective, the Minister for Health noted that such issues also included matters falling under the remit of Projects Malta Ltd. The Minister for Health maintained that this committee was limited in the sense that it did not have access to the financial records of the VGH. Notwithstanding this committee's limitations, the Minister for Health referred to the VGH's failure to pay VAT and National Insurance as issues flagged by this committee. The Minister for Health indicated to this Office that he had informed the Prime Minister of these irregularities, who in turn had notified the Minister for Health that discussions were underway for the replacement of the concessionaire.
- 6.2.33 Several analysis reports regarding the clinical outputs of outpatient services at the KGRH and the GGH, as well as an analysis of surgical procedures output were submitted to this Office.¹² Of concern to the NAO was the fact that no KPI reports were compiled for the SLH. In this respect, the MFH noted that the SLH 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. This perspective contrasted to that outlined by the Minister for Health in the preceding paragraph.
- 6.2.34 The NAO sought to ascertain whether the pre-set objectives corresponding to the KPIs set in the HSDA were achieved by the VGH. Queries to this effect were addressed to the PS MFH. A statement capturing the Ministry's understanding of progress registered by the Concessionaire, or the lack thereof, was submitted to this Office. Relevant entries in relation to each of the KPIs are presented in Figure 17.

¹² KPI reports were provided for Q1 2018 till Q3 2018 and Q3 2019 with respect to the GGH and the KGRH.

Figure 17 | Progress made on the KPIs to be implemented in 2018 at the GGH, the KGRH and the SLH

	KPIs	GGH	KGRH	SLH
Building and Equipment	1: Availability of beds	125 acute beds, 25 day beds, 200 long-term care beds	320 long-term care beds	80 rehab beds
		Progress: The MFH acknowledged that no additional beds were provided by the VGH. In documentation reviewed by the NAO, the MFH noted that it required a timeline for bed provision. Also noted in this regard was that the MFH had no visibility on where the dermatology beds at the SLH would be located. In a meeting with this Office, the MFH expressed its frustration regarding the unacceptable and incomplete works carried out with respect to the orthopaedic ward. The Consultant MFH and the Advisor MFH noted that the VGH had whitewashed an unused room, brought in new beds and deemed this the setting up of the new orthopaedic ward. Consequently, instead of paying the VGH the €600 per bed envisaged in the contract, the VGH was paid €250 per bed, which fee equated with the cost of a medical bed at the MDH.		
	2: Medical Equipment Availability	As listed in the RfP and any other equipment that may be agreed for availability of use	As listed in the RfP and any other equipment that may be agreed for availability of use	As listed in the RfP and any other equipment that may be agreed for availability of use
	Progress: The MFH reported that six new kidney machines, several fiberoptic endoscopes, orthopaedic trauma equipment and a complete replacement of all laboratory analysis machines were provided at the GGH. On the other hand, a stroke unit, a new rehabilitation gym and a new OPU were provided by VGH Management Ltd at the KGRH. However, the MFH highlighted that major expense items such as the cardiac catheterization laboratory, the multi-person hyperbaric chamber and the MRI had not been installed. The new ambulances that were to be provided by the VGH had not been made available. Similarly, the extra beds required in terms of the planned response to major incidents had not been provided. The MFH noted that a timeline for the installation of the agreed equipment was required. Notwithstanding this, the MFH acknowledged that the provision of the required medical equipment as listed in the RfP was very onerous for the Concessionaire.			
	3: Comparison of the use of lab and imaging services from MDH before and after VGH operations	Comparison of the use of medical equipment such as MRI and other imaging and lab services	Comparison of the dependency on MDH services before and after the operations of the Concessionaire	Tracking of the number of beds that are made available by providing rehab services at SLH
	Progress: The MFH declared that no data was provided by the VGH despite requests put forward regarding this indicator. In addition, the MFH noted that the supplied laboratory equipment was not integrated with the IT system in place at the SLH. Nevertheless, the MFH noted that turnaround times for tests carried out at the GGH improved during the period July to September 2018. The NAO was unable to determine whether the improvement registered occurred prior to the transfer of the concession and was noted afterwards, or whether these developments occurred following the transfer.			

Employee Relations and Labour Management	4: Employee satisfaction: Evaluating the employee satisfaction through transition period	VGH Management Ltd was to hold monthly employee satisfaction surveys	VGH Management Ltd was to hold monthly employee satisfaction surveys	VGH Management Ltd was to hold monthly employee satisfaction surveys
	Progress: The MFH noted that during the transition period the evaluation of employee satisfaction was not undertaken as no surveys were carried out. Elaborating in this respect, the MFH indicated that the evaluation of employee satisfaction was still being planned.			
	5: Employee training, development and progression plan	VGH Management Ltd was to assess existing labour skill levels, provide training and development programs and collect data on career progression	VGH Management Ltd was to assess existing labour skill levels, provide training and development programs and collect data on career progression	VGH Management Ltd was to assess existing labour skill levels, provide training and development programs and collect data on career progression
Progress: The MFH referred to several initiatives undertaken with respect to this KPI. Cited was training for senior administrative nurses, as well as that relating to the enhancement of standards of care to identify and manage choking patients, better post-operation pain relief, and the identification and treatment of anaphylactic shock. According to the MFH, recommendations for areas requiring further enhanced training were also made, such as the identification of the deteriorating patient. A draft manual to deal with a major incident involving many patients was produced. Plans were being made to facilitate attendance of critical employees to attend training courses in advanced life support, advanced paediatric life support, and advanced trauma life support.				
	6: Management of Consultants and Specialists	VGH Management Ltd would need to ensure the availability of consultants and specialists	VGH Management Ltd would need to ensure the availability of consultants and specialists	VGH Management Ltd would need to ensure the availability of consultants and specialists
Progress: The MFH noted that three anaesthetic consultants and a consultant in charge of the emergency department were employed during the period under review. However, the MFH acknowledged that a resident radiologist, a psychiatrist, a geriatrician, a cardiologist, a neurologist, a urologist, a renal physician and emergency physicians had not yet been deployed by the VGH.				

Service Delivery and Quality of Care	7: In patient care and various services provided	VGH Management Ltd was to provide all the services outlined and committed in the Agreement and collect numerical data of the number of services provided in each Department.	VGH Management Ltd was to provide all the services outlined and committed in the Agreement and collect numerical data of the number of services provided in each Department.	VGH Management Ltd was to provide all the services outlined and committed in the Agreement and collect numerical data of the number of services provided in each Department.
<p>Progress: While the MFH noted that data on services provided was being collected, attention was drawn to the fact that the epidural service in obstetrics had not yet been initiated. The MFH noted the better management of patients at the ICU. Similarly positive was the MFH’s assessment of the transfer of Gozitan patients to Malta. According to the MFH, rehabilitation care services provided at the KGRH had improved, with the OPU providing better products to patients. Acknowledged by the Ministry in this respect were the problems in the supply of orthoses. The MFH also noted an improvement in the anaesthesia department and the ICU at the GGH due to the employment of three anaesthetic consultants, despite the retention of the same level of activity. The MFH also noted an improvement in cardiology services. In submissions to the NAO, the Consultant MFH highlighted improvements in terms of cleanliness at the GGH; however, indicated that the KGRH only saw a slight upgrade to the reception area, while its nine wards were left in disarray. The MFH acknowledged that three of these wards were eventually refurbished.</p>				
	8: Outpatient Care and Primary Care Services	VGH Management Ltd was to provide all services that are outlined in the Agreement and collect the numerical data of number of services provided in each Department.	VGH Management Ltd was to provide all services that are outlined in the Agreement and collect the numerical data of number of services provided in each Department.	VGH Management Ltd was to provide all services that are outlined in the Agreement and collect the numerical data of number of services provided in each Department.
<p>Progress: The MFH noted that new cardiology services were provided and that a significant increase in the provision of general medicine outpatient services had been registered. However, the MFH also highlighted that there was a deterioration in the number of new cases registered in the ophthalmic, the ENT and the urology clinics.</p>				
	9: Number of surgeries including minor, critical and elective	VGH Management Ltd was to provide and track data on the number, type and length of surgeries throughout the year		

Progress: The MFH noted that data was being supplied by the VGH regarding the number and type of surgeries; however, information relating to the duration of surgeries was not being provided. In addition, the MFH acknowledged that surgery activity was still low, especially in ophthalmology, while interventional pain services had not yet been introduced.

10: IT and Hospital Management System	VGH Management Ltd was to install and incorporate IT systems to digitalise patient data
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Progress: The MFH informed the NAO that VGH Management Ltd had commissioned a company, OHUM, to carry out the installation and incorporation of IT systems. The project was not completed by the time the VGH Management Ltd transferred the project. According to the MFH, the OHUM contract was abandoned and not replaced, with Steward Health Care opting to dismiss all systems and install its own. The MFH noted that it was essential for the IT systems that the Concessionaire was to utilise to be compliant with the systems employed by the MDH and that the Government should have real time access to such IT systems. Notwithstanding this requirement of interoperability, also noted was that Government's right to retain IT data was to be limited to public healthcare service.

11: Patient care and satisfaction	VGH Management was to collect and measure patient satisfaction on a monthly basis	VGH Management was to collect and measure patient satisfaction on a monthly basis	VGH Management was to collect and measure patient satisfaction on a monthly basis
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Progress: The MFH indicated that patient satisfaction surveys were carried out at the KGRH as from Q1 2018 and only on a small number of patients. Corresponding patient satisfaction surveys at the GGH were not carried out by the VGH.

6.2.35 As indicated in Figure 17, patient satisfaction surveys at the KGRH were undertaken as from the first quarter of 2018, while the GGH customer satisfaction surveys commenced as from the first quarter of 2019. The NAO noted an incongruity in that the undertaking of these surveys was contingent on the achievement of the concession milestones, which at the time of reporting, had not yet been achieved. Several patient satisfaction survey reports¹³ were made available to this Office; however, these mainly corresponded to the period following the transfer of the concession by the VGH.

6.2.36 Apart from patient satisfaction surveys, Government could also seek to obtain a third party opinion on the operations of VGH Management Ltd through audits undertaken by VGH Management Ltd or by others. The HSDA allowed for Government to, once a year, appoint an auditor to audit certain activities undertaken by VGH Management Ltd. In response to queries raised by the NAO regarding whether an auditor was so appointed, the MFH replied that verification of the Concessionaire's activities was being undertaken internally. The MFH

substantiated the adoption of this procedure by referring to the fact that either the activity was in its initial stages, such as the patient satisfaction surveys, or the procedure was carried out by the MFH, such as the coding of clinical activity, the verification of the charges put forward or the issuance of the European Health Insurance Card. In other instances, the Ministry's medical consultant and his team of medical officers were tasked with verifying the data being provided by the Concessionaire in relation to performance records. However, the MFH declared that, in 2019, it had engaged an audit firm to verify basic data on 128 clinical employees engaged in 2017 and 2018. As to whether any recommendations were ever put forward to VGH Management Ltd, the MFH stated that, in addition to clinical performance reports, no other audits were requested by the Government. Relevant regulatory authorities' reports consisted only of an investigation into helicopter downtime and recommendations submitted in relation thereto. The MFH noted that recommendations on several issues were being made through the QAB and were captured in the Clinical Performance Reports submitted every quarter. However, 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.

- 6.2.37** The lack of progress registered by VGH Management Ltd during the transition period was the subject of correspondence submitted by the Concessionaire to Projects Malta Ltd on 5 October 2017. Of note was that in this correspondence, the VGH blamed the Government for hindering its work in terms of construction, HR, procurement, finance, IT, public relations and others.
- 6.2.38** According to the VGH, the construction works that were required drew to a standstill because either certain entities did not vacate the premises as envisaged or the SCH raised issues with regard to the proposed works. These constraints related to and bore impact on the development works planned for the SLH outpatient building, the chest clinic, the Substance Misuse Outpatients Unit, the boiler house, the psychiatric building, the kitchen, the spectrometry laboratory, the POYC Unit, the Community Care Unit, the car park and the general gutting of the SLH. Similar constraints were cited with respect to the GGH, where VGH specified concerns relating to the administration building, the permit required for the construction of the Barts Medical School and the main hospital, the POYC, the parts of the site utilised by social workers and nuns, the car park, the old tuberculosis hospital and constraints in terms of building height.
- 6.2.39** In submissions to the NAO in relation to that cited by the VGH, the Minister for Health stated that although the MEH-Health was not responsible for the construction and works elements of the concession and the milestones set in relation thereto, he was nevertheless concerned as failures in this respect were having an effect on the services to be provided,

which required the completion of the new hospitals. The Minister for Health argued that it was no use supplying more doctors and nurses to the hospitals when the infrastructure was not there. Moreover, the Advisor MFH noted that the separation of responsibility between the capital infrastructure and the service provision was taking its toll, as there was limited visibility of what the other was doing. Reference to 'the other' was understood by the NAO as reference to the dichotomous MEH-Energy and MEH-Health structure, and its later variations following the subsequent redesignations in ministerial portfolios. Moreover, the Minister for Health stated that the reason cited by the VGH for such delays was mainly that, contrary to what was originally decided, the planning process did not only require two DNOs, which notifications were in fact issued and later withdrawn.

6.2.40 Highlighted in the 5 October 2017 correspondence submitted by the VGH were several HR-related issues. The VGH highlighted its inability to address staff shortages, particularly in terms of doctors, senior specialists and consultants at the GGH. Cited as a factor influencing these HR-related issues was the agreement reached between Government and the Medical Association of Malta, which imposed several indirect restrictions on the VGH not envisaged or formalised in the Transaction Agreements and that limited the Concessionaire's ability to recruit required personnel. In this context, the VGH argued that they were not being allowed to recruit directly due to Government's commitment to prioritise the transfer of Gozitans. The VGH 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. The VGH indicated that concerns regarding the adequacy of cover related to orthopaedics, neurology, emergency, cardiology and imaging. In addition, the VGH contended that these limitations rendered it unable to deliver on quality commitment to patients and staff, causing frustration thereto.

6.2.41 Evident in the correspondence submitted by the VGH were the failures in coordination and collaboration registered between the Concessionaire and the MDH. According to the VGH, the Transaction Agreements stipulated that Government bore an obligation to provide shared consultants to the VGH; however, this had been resisted by the MDH who had failed to acknowledge the needs of the GGH and to provide the support required and agreed on with Government. The VGH maintained that the MDH perceived the GGH as a 'problem' rather than an opportunity to improve the level of service for patients at the GGH, despite the various lengthy discussions held between the parties. In this context, the VGH contended that this had resulted in an inconsistent and arbitrary provision of resources by the MDH, which disrupted healthcare services provided at the GGH and caused concern among staff.

6.2.42 Another HR-related concern raised by the VGH related to cardiology. The VGH maintained that Government had appointed it as data processor for all patient and resource data associated

¹³ Patient satisfaction survey reports made available to the NAO were as follows:

- KGRH – Q1 2018, Q2 2018, Q3 2018 and Q3 2019; and
- GGH – Q1 2019, Q2 2019 and Q3 2019.

with the sites managed through the concession. Furthermore, Government had agreed to provide the VGH with unrestricted access to all such data. However, the VGH contended that the MDH refused to grant it with access to patient data that the VGH had a right to in terms of the agreement entered into with Government. Although this issue was escalated to the MFH, this was to no avail. The VGH maintained that, as a result, this withholding of information jeopardised patient care and rendered the Concessionaire unable to develop and improve the cardiology service at the GGH.

- 6.2.43 In clarifications sought, the MFH noted that issues related to the replacement of consultants were referred to the Ministry since these employees formed part of the list of resources for which it bore responsibility to sustain and replace personnel in accordance with the LSA. The MFH maintained that doctors from the MDH were deployed at the Concessionaire's sites temporarily until replacements were appointed. In the few cases when the MFH could not source replacements, the VGH recruited substitute personnel. Although this was acknowledged by the VGH, the Concessionaire maintained that it experienced difficulties in recruiting directly, largely attributable to international sector specific shortages. While the MFH recognised the numerous strategies for nurse recruitment that were at the time under consideration, the Ministry noted that the Concessionaire had failed to provide an HR plan. Of note and concern to the NAO was that stated by the MFH in relation to the VGH's solicitation of key Government staff, which was specifically prohibited by the HSDA.
- 6.2.44 Reverting to the October 2017 correspondence, another 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 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.
- 6.2.45 As indicated in paragraph 6.2.1, other concerns raised by the VGH related to finance, IT, and public relations, among others. Finance issues brought to the fore by the VGH mainly related to Government's failure to effect reimbursement for employees transferred to the VGH, a lack of clarity regarding what Government sought in terms of monitoring arrangements, and outstanding amounts owed by Government now transferred to the VGH. In terms of IT, the VGH noted that the demographic information corresponding to employees working at its hospitals was required and yet had not been provided, while difficulties persisted in integrating systems with one another. Finally, with respect to public relations, the VGH maintained that its efforts to promote the project had been hampered by the excessive control and bureaucracy of the MFH, as well as the general lack of cooperation from Government and the MFH in responding to enquiries by the media.

6.2.46 In submissions to the NAO on the overall context of the October 2017 correspondence, the Minister for Health stated that through this correspondence, VGH Management Ltd was retaliating to action being taken against it for its failure to pay its VAT and National Insurance dues. On the matter, the PS MFH noted that VGH Management Ltd had not referred to its failures in the correspondence, namely, the fact that it had not injected in the project adequate capital and had failed to secure a bank guarantee. Notwithstanding this, the PS MFH noted that the Ministry could not be blamed for some of the issues listed by VGH Management Ltd as these emerged from the fact that the contractual framework was poorly designed and did not adequately regulate the operative element of the agreement.

6.2.47 Tracking back to the KPIs, specifically to KPI5, which focuses on the provision of training by the VGH, the Concessionaire noted progress registered in this respect in reports submitted to the MFH. In the 'Quality Improvement and Patient Safety performance report: VGH Karin Grech Hospital and VGH Gozo General Hospital for the period April 2016 – Sept 2017', the VGH listed several staff training initiatives as having been undertaken at the GGH and the KGRH. These included the following: Principles and process of Joint Commission International (JCI) accreditation; applying fire safety techniques; falls risk assessment and reporting; infection prevention and control including hand hygiene and the importance of vaccinations. Other measures relating to compulsory induction training, the creation of communication channels and structures to raise and communicate concerns regarding the operation of the hospitals and performance in its broadest sense were contemplated in the report by the VGH. The CEO GGH and the CEO KGRH cited other training delivered by the PHI, which training formed part of an assessment undertaken by the PHI to assist the hospitals in their efforts at securing accreditation. The NAO noted that the training initiatives noted by the VGH diverged to those sourced through information made available by the MFH.

Gozo General Hospital

6.2.48 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. This Office noted that the number of available acute beds reported in the activity report submitted in relation to the GGH for the periods 2016 till June 2018 was stated as being 108. 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. According to the MFH, as at 1 January 2020, only 10 orthopaedic beds (understood by the NAO as corresponding to the acute care beds) were made available at the GGH.

6.2.49 Moreover, the NAO sought to understand why the third Addendum to the HSDA was signed by the Minister for Tourism rather than the Minister for Health, particularly in light of the revised 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 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. In a Cabinet memorandum presented by the Minister MOT, the reason for the extension was stated to be unforeseen delays in the issue of planning permits, which led to delays in construction works.

- 6.2.50 Cited in the same activity report was that the average inpatient length of stay and occupancy rates in the general male, general female, and gynaecology wards increased markedly between 2016 and 2018. In the male general wards, the average length of stay increased from 3.9 days in 2016 to 5.4 days in 2018. In the female ward, the increase was even more pronounced, with the length of stay more than doubling from 5 days in 2016 to 11.4 days in 2018. The gynaecology ward also saw an increase from 1.8 days to 2.3 days, while all other wards remained stable. Regarding occupancy rates, the general male ward increased from 64 per cent occupancy in the period June to December 2016 to 89 per cent occupancy in January to June 2018, while the general female and gynaecology ward increased from 74 and 16 per cent to 96 and 32 per cent, respectively, in the same period.
- 6.2.51 An increase in demand was also registered with respect to several outpatient activities undertaken at the GGH in comparison to the 2014 figures provided in the HSDA. Overall, the total number of visits in 2017 at the 28 medical outpatient clinics analysed was 37,918. This represented a 27 per cent increase from 2014. While the number of new cases in 2017 was 8,472 and had decreased by 7 per cent from 2014, the number of follow-up cases seen in 2017 was 28,710 and had increased by 38 per cent from 2014. This increase in demand confirmed the concerns raised by the MFH regarding the inclusion of a capping for the provision of outpatient services, with volumes exceeding 2014 levels charged over and above the minimum charge.
- 6.2.52 In reply to queries submitted by the NAO, the MFH noted that surgery hours were below 3,000 hours and no extra payments had been made. However, the MFH also provided the NAO with a risk register, compiled by the Ministry, that addressed several aspects of risk and weakness relating to the obligations arising from the HSDA and the LSA. In this risk register, it was noted that the 3,300 surgery hours included in the minimum charge would be modified through a new payment methodology. Elaborating in this regard in a meeting held with this Office, the Consultant MFH noted that the Ministry faced difficulty in understanding how the 3,300 surgery hours were being arrived at when measuring surgery hour utilisation, since surgery hours vary in nature. The MFH representatives observed that the HSDA, as drafted, 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 on only one metric. 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 its implementation. 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. However, the PS MOT recognised that substantial preparatory work, including contract templates and schedules, had been prepared in advance, and that various addenda had been entered into at a later stage. This sentiment was, to an extent, mirrored by the Negotiation Committee, who argued that the best method for procurement of this type of project would have been a competitive dialogue, which would have ensured a detailed discussion over a longer period of time. Confirming the pressure to conclude the negotiations in a short timeframe was correspondence dated 22 July 2015, wherein the CEO BEAT Ltd informed the other stakeholders involved in negotiations and contract drafting that instructions had been received to conclude negotiations by 10 August 2015 and acknowledged that the timeframe was tight. Conspicuously absent from this correspondence were the PS MFH and the CEO GGH (despite the CEO KGRH and the Consultant Surgeon GGH being included).

6.2.53 Also cited in the HSDA were a list of outcomes to be achieved. In submissions on the matter made to this Office, the MFH noted that while the achievements were to be quantified after the completion date, no major milestones were achieved under the VGH (except for the OPU and the Stroke Unit, which related to the KGRH). The MFH elaborated that there had been no achievement of new paradigm and that the only 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. In further submissions made by the MFH to the NAO, the Ministry indicated that no new services were provided at the GGH that could remotely replace the requirements of patients currently being sent abroad for treatment.

6.2.54 Aside from the provision of new services, VGH Management Ltd also had to undertake refurbishment works and upgrades to better support the demand for services, particularly in relation to the outpatient consultant rooms, which were deemed key in supporting outpatient activity. In response to queries raised by this Office, the MFH stated that no major refurbishment was carried out in the outpatient area. The implication of this failure on the part of the VGH was that certain services such as dentistry and psychiatry, which were meant to be provided with appropriate outpatient facilities, continued to be provided from the old facilities. In further elaboration on the matter, the Consultant MFH 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 an MRI 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 VGH to Steward.

- 6.2.55 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 a number of new treatments were to be provided, the MFH replied that nothing was delivered except for regular outpatient clinics and a minimal amount of minor and intermediate urology surgery. The MFH informed the NAO that visiting consultants from the MDH had been reluctant to increase the level of surgery without the presence of a resident urologist. In a meeting with the NAO, the Consultant MFH explained that while current urology services provided from the GGH were limited, there was scope for expansion since the number of patients requiring these services was substantial. Stagnation in progress was also noted in connection with the obstetrics and gynaecological ward, with the MFH conceding that no new services had been introduced 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.
- 6.2.56 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. Although the provision for an immunology department was removed by virtue of entry into the second Addendum, the MFH noted that a good quality laboratory had been procured and awaited delivery. The laboratory included new equipment to be integrated with current IT systems, allowing for most daily tests to be carried out. However, 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 as to whether these services were best sited in Gozo and noted that they were in fact removed in the second Addendum to the HSDA.
- 6.2.57 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. The HSDA also provided for a one-

to two-bed child psychiatry facility within the ward; however, the MFH noted that while this facility was being contemplated, nothing had in fact been done. The MFH informed the NAO that adjustments were also being considered in relation to the requirements put forward for 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. On the other hand, the envisaged revamp of the primary care service that was to be provided to the GGH patients in terms of the HSDA was removed from being an obligation of the VGH. In this context, the MFH declared that Government had made other plans and that the said services were to be provided by Primary Health Care Malta. The Consultant MFH referred to the reversion of primary health care to Government as another responsibility taken off the VGH's shoulders. In addition, the Ministry informed the NAO that the contractual requirement to have a Health NGO Resource Coordination Centre built and run in any GGH building was to be waived since an NGO coordination centre already existed in Gozo. 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. This Office's perspective of understanding resonated with similar reservations expressed by the MFH. 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 botched health service concession.

6.2.58 Another requirement of the HSDA was that the VGH was to make available access to rheumatology specialists. The MFH stated that one general medicine specialist was providing a limited rheumatology service; however, patient access to this service was seriously curtailed by excessively long waiting times for new appointments. In terms of the intended improvement in cardiology services as provided for in the second Addendum, the MFH indicated that this was addressed for a period of time through the VGH's contracted services of a senior cardiologist, whose services were later discontinued. On the other hand, cardiology outpatients, echocardiogram and Holter Monitoring continued to be provided through the support of visiting specialists from the MDH.

6.2.59 In other instances, new equipment was required as part of the upgrades set out in the HSDA. In this respect, the VGH was to provide new and upgraded facilities and medical equipment to address the gastroenterology and endoscopy department's requirements, while in tandem ensuring that relevant specialists were recruited. The MFH informed the NAO that while the VGH replaced old endoscopes with new ones, no gastroenterologist had been recruited. Instead, gastroenterology was being carried out by general surgeons and general physicians. The HSDA also provided for the upgrading of dermatology services, together with the provision of services relating to sexually transmitted diseases and sexual health. In response to queries raised by this Office, the MFH noted that no new dermatology centre was set up and that sexually transmitted diseases and sexual health-related services continued to be provided from the MDH. With respect to the upgraded service required for nephrology and endocrinology these were not undertaken during the period under review.

- 6.2.60 According to the MFH, the weakest link within the GGH was its accident and emergency department. The MFH maintained that this department was severely understaffed in terms of the required qualified specialists and that the recruitment of additional staff was extremely difficult. In view of these circumstances, care was instead being provided by enthusiastic general practitioners. The Ministry noted that the only change in personnel registered at the accident and emergency department was the replacement of the department's previous chair with a new recruit.
- 6.2.61 As for ambulatory services, the GGH relied on land and air transportation. With respect to the latter, the VGH noted that several issues were hampering the use of the helicopter for the transportation of patients to Malta. In a list of complaints submitted by VGH Management Ltd to Projects Malta Ltd on 11 October 2017, the Concessionaire stated that it had to 'share' the use of the heliport with other users, which shared use was leading to the suspension of the helicopter service whenever other users – such as model plane groups – were making use of the heliport. Of note was that even though the helicopter service was at times suspended, Government was still requested to pay for the service. When Government disputed this, the legal advice obtained turned down Government's protests, since it noted that several delays in the service delivery related to the use of the helipad and surrounding infrastructure. It concluded that it was due to Government's inability to address the situation that the helicopter service was being suspended. Nevertheless, it is important to note that VGH Management Ltd was to construct a new helipad as part of the ancillary services required at the GGH. The MFH stated that this requirement had not been met by the Concessionaire.
- 6.2.62 With respect to the Intensive Care Unit, the HSDA listed several measurable outcomes that VGH Management Ltd was bound to achieve. The MFH noted that the recruitment of three consultant anaesthetists had improved the Intensive Care Unit's results in terms of the treatment of difficult cases and results achieved; however, no further information to substantiate whether the outcomes listed in the HSDA were achieved was provided.
- 6.2.63 VGH Management Ltd was also bound to provide GGH patients with safe blood products. The MFH noted that although no concession milestone was yet achieved, there was no significant increase in the use of blood and blood products. To maintain the required volume of blood and blood products, VGH Management Ltd could seek another local source; however, the MFH noted that the only source for blood in Malta and Gozo was the national blood transfusion service, therefore it is unclear why reference to the possible use of another local source was cited in the HSDA.

Karen Grech Rehabilitation Hospital and St Luke's Hospital

- 6.2.64 As outlined in paragraph 3.2.59 of this report, an element of the Government's service requirements with respect to the KGRH and the SLH were 320 inpatient beds for geriatrics and 80 rehabilitation beds for patients requiring intensive rehabilitation. From an analysis

of the KPI report submitted with respect to the KGRH for the first quarter of 2018, it was noted that on average the KGRH occupancy rate was at 98.7 per cent for that quarter, with five wards out of nine having full occupancy and in some months even exceeding that. Notwithstanding this, the MFH noted that the activity in the hospitals remained stable when compared with 2014, with no private sector services provided between 2016 and 2018. Also noted was that data from the KGRH for 2018 showed acceptable rates of readmission of patients to the MDH and KGRH. Readmission was defined as admission within 30 days of discharge. According to the MFH, as at 1 January 2020, only 28 long-term care beds (understood by the NAO as corresponding to the geriatric care beds) were made available at the KGRH.

6.2.65 According to the HSDA, the geriatric inpatients were to be provided with several services, which the MFH explained were being monitored through monthly visits and quarterly reports from the Concessionaire, including customer satisfaction surveys. The MFH noted that this monitoring process rendered evident the need to extend the provision of physiotherapy services to the afternoon and over weekends. However, the NAO ascertained that no agreement on this was reached with VGH Management Ltd since discussions were ongoing even after the VGH transferred the concession. In a list of complaints submitted by VGH Management Ltd to Projects Malta Ltd, the Concessionaire stated that the MFH decision to increase the number of orthopaedic surgeries through private service providers did not in turn see to the need for an increase in the support services required, such as physiotherapy in the case of the KGRH. The VGH contested that the MFH was instead transferring experienced physiotherapists from the KGRH and replacing them with inexperienced individuals. VGH Management Ltd also complained that there was insufficient manpower for allied services to cover acute and mental health services within the Hospitals.

6.2.66 Notwithstanding this, the MFH noted that certain improvements were undertaken with respect to the inpatient rehabilitation services. The Ministry stated that improvements were made in relation to the gym facilities, the stroke unit and in terms of personnel assigned thereto. This led to improvements in the Barthel scores of patients utilising the service. A new OPU was set up. In the first quarter of 2018, the waiting time for orthotics in the first quarter of 2018 was of 45 days, for upper limb prosthetics was of 90 days and for lower limb prosthetics was of 21 days. In the risk register relating to the contractual framework, the MFH noted that service level agreements were required to address the waiting time for assessment and delivery of custom-made boots and prosthesis.

6.2.67 In addition, the KGRH and the SLH were to provide laboratory and imaging tests and have a pharmacy that addressed the requirements of both hospitals. Regarding the latter provision, the MFH noted that no changes were made since the concession milestones had not yet been achieved and the project was not yet complete. The Hospitals were also to have their own mortuary facilities; however, the MFH indicated that the mortuary services at the MDH were being used instead.

- 6.2.68 The SLH was to also have a Dermatology and Holistic Care Centre, yet such a service did not operate between 2016 and 2019, with the MFH declaring that no requests for payment were issued by the VGH and settled by Government for such services. Moreover, the MFH declared that the SLH remained a derelict building that was not used for the provision of any clinical services beyond gym physiotherapy and hydrotherapy. Apart from this, the VGH failed to provide for the ancillary services envisaged, 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.
- 6.2.69 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 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.

Charges prior to the completion date of the project

- 6.2.70 As indicated in paragraph 6.2.1, the analysis of charges arising out of the HSDA is grounded within a frame of reference set prior to the completion date, referred to as the transition period. During this period, the concession milestones would not have been achieved and payments effected by Government were intended to maintain the existing levels of service consistent with that delivered directly by it prior to the award of the concession.
- 6.2.71 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 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 (Figure 18 refers).

Figure 18 | Charges prior to the completion date

	2016 (€) (excl. VAT)	2017 (€) (excl. VAT)
GGH	32,500,000	32,500,000 + annual healthcare budget increase for 2017
KGRH	18,500,000	18,500,000 + annual healthcare budget increase for 2017
Total	51,000,000	51,000,000 + annual healthcare budget increase for 2017

- 6.2.72 The Advisor MFH informed the NAO that the then Parliamentary Secretary for Health had commissioned a costing exercise to determine whether the concession fees being paid were consistent with the fees previously incurred for the running of the hospitals. The costing exercise for the GGH was based on unit costs established at the MDH for similar activities and amounted to approximately €35,000,000. In the case of the KGRH, the audited accounts indicated a total cost of €17,000,000. Therefore, the concession

fee payable to the VGH in the transition period was deemed to be at par with the costs incurred pre-concession. However, the Advisor MFH noted that uncertainty prevailed in the case of certain costs, such as pharmaceutical supplies and medical supplies, due to unclear contractual provisions. In addition, the PS MFH cited labour supply issues, in terms of financial costs and clinical uncertainty, as other elements to consider when assessing whether the concession represented fair value.

- 6.2.73** In submissions to the NAO, 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 halted for a period since the transition period was repeatedly extended.
- 6.2.74** Furthermore, as from 1 June 2017, these amounts were to also include a two per cent increase per annum. The two per cent annual increase was also applicable to the air ambulatory service, which service was operational during the transition phase. The annual charge that was to be levied by the VGH to Government for the air ambulatory service, exclusive of VAT, was of €1,000,000 and was capped at 200 airlifts per year.
- 6.2.75** Moreover, the SCA provided for a €3,000,000 concession fee, payable by the VGH in equal instalments over 10 years, with the first instalment payable within one year from the effective date. This amount was charged by Government and was set off against any amounts due to the Concessionaire.
- 6.2.76** A payroll charge was due by the VGH to the Government for the resources leased from it, which charge 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. This change was made with the consideration that VGH Management Ltd was required to process fixed capped periodic payments to the Government in relation to the payment of resources, whereas the Government was to settle varied amounts in relation to the service concession fee, in excess of the capped amounts due by the Concessionaire. The MFH maintained that as the contract was still considered to be in the transition phase during the time under review, the set-off payments were planned to be processed on a quarterly basis. From documentation provided to this Office it was confirmed that the relevant payments were settled throughout the period under review.

- 6.2.77** The Addendum to the LSA stated that the charges to be paid by the VGH to the Government for the resources leased were capped at €32,234,637 and subject to a fixed annual two per cent increase for the duration of the concession period.
- 6.2.78** The total amount invoiced by the VGH for the period June 2016 to 19 February 2018 amounted to €56,921,018.¹⁴ During this period, payments made by Government to the VGH amounted to €54,636,798. It must be noted that, on 16 February 2018 the shares of VGH Ltd were transferred to Steward Healthcare International Ltd. If one were to include 2018 as a whole, then the total amount invoiced by the VGH (from June 2016 up to February 2018) and Steward (from February 2018 till December 2018) was €90,669,739. Total payments made by Government between 2016 and 2018 stood at €87,306,261.
- 6.2.79** The total amount due to the VGH by Government for the period June to December 2016 was €16,793,129. The amounts due with respect to the GGH (€32,500,000) and the KGRH (€18,500,000) were pro-rated and VAT charged, resulting in a cost to Government of €22,370,833 and €12,734,167, respectively. Also to be considered was the fee payable to the VGH for the air ambulatory service (€1,000,000), which was pro-rated and VAT levied, resulting in a cost to Government of €491,667. Out of the €35,596,667 total due to the VGH, a deduction of €18,803,538 was effected, corresponding to the salaries paid by Government directly to the resources and offset against the Concessionaire's payment. Salaries paid by Government with respect to the GGH and the KGRH amounted to €11,154,308 and €7,649,231, respectively. As indicated, the offsetting of the €35,596,667 and the €18,803,538, resulted in an amount due by Government to the VGH of €16,793,129 (Figure 19 refers).

Figure 19 | Charges due in 2016

		2016 (€)
Amount due to VGH (incl. VAT)		
GGH ¹	22,370,833	
KGRH ¹	12,734,167	
Air ambulatory service ²	491,667	
Total due to VGH		35,596,667
Amount due to Government		
Salaries - GGH ¹	(11,154,308)	
Salaries - KGRH ¹	(7,649,231)	
Total due to Government		(18,803,538)
Amount due to VGH		16,793,129
Deductions		(8,932,371)
Additions		8,161,649
Amount due to VGH following adjustments		16,022,406

Notes:

1 This is a pro-rata charge for the period June to December 2016.

2 This is a charge for the period August to December 2016.

- 6.2.80 Various deductions and additions were set off against the €16,793,129, which resulted in an amount invoiced by the VGH for 2016 of €16,022,406.
- 6.2.81 Deductions, amounting to a total of €8,932,371, consisted of amounts due to Government over the period June to December 2016. These comprised:
- a seven monthly tranches of €1,166,667 each, which tranches corresponded to payments made by the Government to the KGRH;
 - b reimbursements relating to the expenditure incurred by the GGH that had already been paid for by the Government for the months June to September 2016 (€114,119);
 - c reimbursements to the Government in respect of the bank balances of the KGRH (€634,976); and
 - d receipts for Government debtors relating to the KGRH (€16,607).
- 6.2.82 Several additions, amounting to €8,161,649, were due to the VGH. These entailed:
- a an amount of €5,646,442 with respect to emoluments, of which €1,370,000 were estimated emoluments for December 2016;
 - b augmentations in contracts entered into in relation to the GGH and the KGRH (€1,305,688);
 - c reimbursement to the VGH in respect of revenue deposited in the GGH public account during the period June to December 2016 (€57,194);
 - d reimbursement to the VGH for payment of Government creditors for the period June to September 2016 (€1,109,057);
 - e reimbursement to the VGH in respect of the GGH's commitments prior to June 2016 (€5,733); and
 - f income from the VGH debtors relating to the KGRH (€37,535).
- 6.2.83 For 2017, the total amount due to the VGH by Government was €33,677,760. The full amount was due with respect to the GGH (€32,500,000) and the KGRH (€18,500,000), which increased to €38,500,000 and €21,830,000, respectively, once VAT was levied. However, these amounts were subject to revisions in terms of the annual healthcare budgetary increase. The amount due with respect to the GGH was revised to €41,481,916, while that of the KGRH increased to €23,612,784. The air ambulatory service fee was also revised, increased by two per cent, resulting in an amount due to the VGH of €1,193,767. The total amount due to the VGH in respect of these charges was €66,288,467. From this amount due to the VGH,

Government deducted the salaries payable with respect to the resources deployed at the GGH (€19,121,670) and the KGRH (€13,112,967). The salaries payable were subject to a two per cent inflation increase, which resulted in a revised total charge payable by the VGH to Government of €32,610,707. The offsetting of the amounts due by Government to the VGH, and vice-versa, resulted in an amount due by Government to the VGH of €33,677,760 (Figure 20 refers).

Figure 20 | Charges due in 2017

	2017 (€)
Amount due to VGH (incl. VAT)	
GGH	38,350,000
Healthcare budgetary increase ¹	3,131,916
Subtotal GGH	41,481,916
KGRH	21,830,000
Healthcare budgetary increase ¹	1,782,784
Subtotal KGRH	23,612,784
Air ambulatory service	1,180,000
Inflation increase (2%) ²	13,767
Subtotal air ambulatory service	1,193,767
Total due to VGH	66,288,467
Amount due to Government	
Salaries – GGH	(19,121,670)
Inflation increase (2%) ²	(223,086)
Salaries – KGRH	(13,112,967)
Inflation increase (2%) ²	(152,984)
Total due to Government	(32,610,707)
Amount due to VGH	33,677,760
Deduction	(277,176)
Addition	155,229
Amount due to VGH following adjustments	33,555,813

Notes:

1 The budgetary healthcare increase was of 7 per cent for the period January to May 2017, and of 9 per cent from June to December 2017.

2 This yearly increase was effective from 1 June 2017.

6.2.84 The €33,677,760 established as the amount due to the VGH by Government for 2017 was subject to a couple of set-offs, which reduced the amount due to the VGH to €33,555,813. One of these adjustments was an addition of a charge of €155,229 relating to continuous professional development, the provision of services by a medical physicist and an audiologist, traditional Chinese medicine, as well as pharmaceuticals and medical consumables. An amount of €277,176 relating to the November and December tranches payable with respect to the KGRH was deducted. The net effect of these additions and deductions was a balance due to the VGH of €33,555,813.

¹⁴ This amount includes an invoice that was disputed by Government.

6.2.85 In 2018, the total amount paid to the Concessionaire by the Government was of €38,418,946, of which €5,262,869 was payable to the VGH with respect to the period January to February 2018 (Figure 21 refers). The amount due to the VGH by the Government in terms of the GGH, the KGRH and the air ambulatory service totalled €9,819,434. On the other hand, the amount due by the VGH to the Government for salaries paid to the resources at the GGH and the KGRH, as well as the relevant inflation increases, was €4,556,565. The offsetting of the amounts due by the Government to the VGH and vice-versa resulted in a balance payable to the VGH of €5,262,869.

Figure 21 | Charges due in 2018

	2018 (€)		
	VGH	Steward	Total
Amounts due to VGH/Steward (incl. VAT)			
GGH	5,253,425	33,096,575	38,350,000
Healthcare budgetary increase 2017 (7%)	367,740	2,316,760	2,684,500
Healthcare budgetary increase 2018 (6.47%)	363,689	2,291,243	2,654,932
Inflation increase (2%) ¹	166,359	1,048,059	1,214,417
Subtotal GGH	6,151,212	38,752,637	44,903,849
KGRH	2,990,411	18,839,589	21,830,000
Healthcare budgetary increase 2017 (7%)	209,329	1,318,771	1,528,100
Healthcare budgetary increase 2018 (6.47%)	207,023	1,304,246	1,511,269
Inflation increase (2%) ¹	94,696	596,587	691,283
Subtotal KGRH	3,501,459	22,059,193	25,560,652
Air ambulatory service	161,644	1,018,356	1,180,000
Inflation increase (2%) ¹	5,119	32,248	37,367
Subtotal air ambulatory service	166,763	1,050,604	1,217,367
Total due to the VGH	9,819,434	61,862,434	71,681,868
Amounts due to Government			
Salaries – GGH	2,619,407	16,502,263	19,121,670
Inflation increase (2%) ¹	83,559	526,422	609,981
Salaries – KGRH	1,796,297	11,316,670	13,112,967
Inflation increase (2%) ¹	57,302	361,002	418,304
Total due to Government	4,556,565	28,706,357	33,262,922
Amounts due to VGH/Steward	5,262,869	33,156,077	38,418,946

Notes:

1 This yearly increase was effective from 1 June 2017.

6.2.86 In terms of the total amount due by Government to the VGH and Steward with respect to 2018, that is, €38,418,946, several adjustments were required. Adjustments effected in 2018 related to the pro-rata charging of the €3,000,000 concession fee, payroll and staff movements and invoices issued by the OPU.

6.2.87 Total deductions that were to be effected by the Government in terms of the amount due to the Concessionaire amounted to €2,403,871. The deductions comprised:

- a a pro-rata charge of €775,000 in relation to the €3,000,000 concession fee, which payment covered the period from 1 June 2016 to 31 December 2018;
- b nursing payments of €117,280; and
- c a set-off of €1,511,591 arrived at by deducting €9,488,409, which related to payroll costs at the KGRH due to the Concessionaire, from the KGRH tranche payment for 2017 of €11,000,000.

6.2.88 Aside from these deductions, two additional invoices were submitted to the Government by the VGH. These entailed:

- a a request for reimbursement by the OPU amounting to €1,244,321, which was settled in full; and
- b a charge related to staff movements at the KGRH and the GGH between June 2016 and December 2017. The amount invoiced by the VGH in this respect stood at €3,832,122; however, this amount was disputed by the Government. Of this amount subject to dispute, the Government paid €468,645.

6.2.89 Effecting the deductions and additions captured in the preceding paragraphs resulted in a final amount due to the VGH for 2018 of €37,728,041.

6.2.90 Based on documentation reviewed by the NAO, it was evident that the MFH was concerned about the nature of the services to be provided by the VGH and the determination of the fees to be paid by Government for the services rendered during the transition period. Notwithstanding this, the MFH confirmed that payments to the VGH were up to date except in cases where issues and disputes existed. The MFH maintained that even in cases of disputed matters, the Ministry was obligated to pay the VGH for the services charged since the hospitals were to be kept operational. However, the MFH sought to ensure that when a dispute was registered, the aggregate payments made to the VGH did not exceed the annual charge of €51,000,000 and inflation increases. The MFH emphasised that, in principle, the Ministry was not in agreement with payment on account and attempted to avoid paying the VGH in this manner.

6.2.91 In terms of the charges arising during the transition period, the MFH explained that payments in relation to the lease of Barts Medical School were not the responsibility of the Ministry; however, during the period under review, no payments for the Barts Medical School were made as it had not yet been built.

6.2.92 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 in the agreement periods. Also noted by the NAO was the difference in sums payable for lease of the property. The 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.

6.2.93 Further elaborating on the payments issued to the VGH, the MFH stated that the dermatology and holistic care centre were not in operation between 2016 and 2018 and hence no payments were issued in this respect. The only payments made over and above the €51,000,000 payable and its relevant adjustments corresponded to the air ambulatory services.

6.2.94 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 with the VGH's position since, during this period, the VGH was bound to continue to operate the hospitals and at least maintain the existing quality and activity levels.

6.2.95 In addition to the services not covered in the contract, 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.

¹⁵ No information was provided for 2017 for MDH recharges.

6.2.96 Based on documentation provided by the MFH, the NAO established that for the year 2016, Government paid a total of €1,438,078 for medical supplies and pharmaceuticals utilised by the GGH and the KGRH (including MDH recharges). For the year 2017, Government paid a total of €3,961,571 for the KGRH and the GGH.¹⁵ By contrast, the HSDA sets the annual consumption for medical supplies and pharmaceuticals to be paid for by the VGH as from 2018 onwards at €1,800,000. In a meeting held with the NAO, the MFH affirmed that the €1,800,000 provided 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 another €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 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. This argument was corroborated by the Negotiation Committee, with the CEO BEAT Ltd and the Partner RSM noting that, during negotiations, they were only provided with the financial estimates of the hospitals, hence explaining why certain budgetary elements, such as costs incurred by the CPSU, were not included. Of note to this Office were concerns expressed by the MFH in this regard, whereby the Ministry lamented that while these direct costs ought to have featured in the HSDA budget they 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 caught 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.

6.2.97 Following the transition period, Government had to take up at least 712 beds per day at a specified cost. Although the MFH acknowledged that the HSDA captured economic and financial considerations when arriving at its pricing structure of €600 per bed per night, the Ministry held that a stronger coupling of the cost structure with activity would have provided better reassurance that value for money was being guaranteed. The MFH noted that, against this backdrop, technical discussions were underway with the Concessionaire to restructure the payment methodology post-completion in line with the activity. Elaborating in this respect, the MFH emphasised the need to better balance the risk and reward of the concession and noted that it had entered into discussions with the VGH with this mindset, seeking to establish a pay per use for beds and doctors utilised. Despite its efforts, the Ministry conceded that its proposal was not accepted as the Concessionaire sought a fixed income. According to the Advisor MFH, if all the services and beds were

to be provided as per the HSDA, this would result in an annual cost to Government of approximately €92,000,000. Also 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.

6.2.98 Irrespective of the number of beds utilised, Government was always bound to pay a minimum charge defined in the HSDA as the minimum healthcare delivery fee or the minimum service delivery fee, which included not only the medical services, inpatient care, emergency care, and rehabilitation, but also basic pharmaceuticals and medical supplies consumption. The latter was capped at an amount for the GGH and the KGRH without any mention of the SLH. Enquiries in this regard were directed to the MFH. In reply the Ministry indicated that the SLH did not provide for any clinical services except for physiotherapy and hydrotherapy. Notwithstanding this, the NAO is of the opinion that it was unclear whether the SLH would be providing clinical services in the future and therefore reference in this respect would have been appropriate. Nevertheless, the Concessionaire was bound to provide, after completion, a plus 10 per cent variation of quoted figures on the activity undertaken (excluding number of beds), which would then reduce to a plus five per cent variation every three years from the second year of completion. This increase in activity was to be at no cost to Government. However, the MFH noted that, although this was to Government's advantage and did not need renegotiation, the Ministry also stated that according to healthcare statistics, a five per cent increase in activity may not be sufficient to cater for requirements. On the other hand, any additional service, bed (understood by the NAO to signify different bed types not captured in the minimum beds service and guarantee) or special care that was not captured in the minimum charge was to be paid for separately and charged at a 30 per cent discount of the amount charged for medical tourism services. These additional costs were flagged in the risk register drawn up by the MFH, wherein the Ministry highlighted the additional payments arising for the catheterisation laboratory, vascular angiogram, MRI and additional visits beyond the stipulated levels for 2014. The MFH informed the NAO that since the VGH never commenced its medical tourism services, no such services were requested or used by the MFH. However, the MFH noted that if the new payment methodology it envisaged was adopted, that is, where payment would be based on the activity provided by the Concessionaire, this would provide greater assurance that value for money was achieved.

6.2.99 To address any increase in expenditure incurred throughout the term of the concession, the HSDA provided for the minimum fee to be increased by an amount equal to the highest of either two per cent or the Harmonised Index of Consumer Prices. In accordance with this provision, the MFH applied a two per cent increase as from 2017. The HSDA also included

a provision allowing for an upward revision in the amount payable to the VGH, which revision corresponded to the annual healthcare budget increase. Although outside of the immediate period of interest of this audit, the NAO noted that the MFH withheld the budget increment for 2019 since the Ministry deemed it imprudent to continue augmenting the budgetary allocation afforded to the VGH year-on-year when the transition period continued to be exceeded and the new hospital remained incomplete. Nevertheless, the HSDA provided that the minimum fee and subsequent increases were always to be payable by Government irrespective of bed occupancy, which provision effectively constituted a revenue guarantee for the VGH. While the Advisor MFH argued that this provision drastically reduced the risk borne by the VGH, the Negotiation Committee, as represented by the CEO BEAT Ltd and the Partner RSM, contended that this measure was essential as it was the only form of guarantee Government had to block the availability of beds for its clients. Notwithstanding that stated by the Negotiation Committee, of major concern to the NAO was that Government bound itself to pay significant public funds without providing for a mechanism that would allow for downward revisions should circumstances so warrant. This concern mirrors that expressed by the Minister for Finance in correspondence submitted to the Prime Minister on 12 December 2016, wherein he argued that the inclusion of provisions that guaranteed revenue to the Concessionaire would change the nature of the agreement from a PPP to a government project and result in an undesired effect on the Government's balance sheet as expenditure incurred on the project by the Concessionaire would be classified as Government expenditure (see section 7.4 for further details in this respect). It was in this context that the MFH argued that such clauses ought to be renegotiated, particularly in terms of the fact that the annual two per cent increase as set in the Agreement was in addition to the healthcare budget increase of eight per cent per annum.

- 6.2.100 In line with the provisions of the second Addendum to the HSDA, the MFH was effecting a quarterly payment in advance instead of a monthly one in arrears as had been previously stipulated in the HSDA. Notwithstanding the fact that the requirement to submit a monthly billing report had not come into effect, for this was an obligation following the completion date, the MFH noted that monthly reports of patient activity together with the monthly financial reports of the VGH were being provided during the transition period. The MFH stated that this allowed Government to review and contest any irregularities it would come across when vetting submitted invoices.
- 6.2.101 In substantiation of this statement, the MFH referred to the several disputes that had been registered mainly relating to disagreements on the workings of salaries to be paid, the list of resources provided and the lack of proof in support of claims raised. Another dispute related to the standard of works to be undertaken, with specific reference made to the setting up of the orthopaedic ward within the GGH as a case in point. The dispute emerged as a result of the VGH contending that works were complete whereas the MFH deemed the works undertaken by the Concessionaire to be unacceptable (Figure 17 KPI1 refers). Notwithstanding this, the MFH acknowledged that although it had the

ability to contest claims, the Ministry adopted a cautious approach to engineer solutions that ultimately were of benefit and did not cause any hardship to the end-users of services. Nevertheless, the MFH also noted that the fact that the VGH was granted real rights over the sites limited the Ministry's ability to take action, since the Concessionaire retained the right to prohibit the MFH from entering its premises and undertake the required verifications. The Consultant MFH referred to one instance when he was banned from accessing the hospitals after raising several complaints in relation to the concession. The matter was eventually de-escalated following the intervention of the PS MFH.

6.2.102 The HSDA stipulated the procedure that was to be followed when service failures were noted. Cited in this respect was that the Government was to notify the QAB of perceived breaches in services, which notification would trigger subsequent action. The MFH informed the NAO that the QAB had not been notified by the Government of any perceived breaches in services. However, when queries were raised regarding service failures, the MFH referred to a period when the air ambulatory service was not available and payments in this respect were withheld from June 2016 until February 2017. During this period, the VGH was incurring monthly costs of €94,400, besides the initial deposit of €150,000, as the helicopter had been delivered to it in July 2016. The dispute arose as the VGH claimed that it could provide the service as early as July 2016; however, it had not been allowed to do so by various government entities. Following legal assistance sought, key in determining whether the delays in the use of the helicopter merited the payment to the Concessionaire as stipulated in the contract, or otherwise, it was concluded that the delays registered could not be wholly attributed to the VGH, and the Concessionaire's payment claim was settled starting from August 2016. Elaborating on this matter, the PS MFH informed the NAO that the Ministry had not been informed that the helicopter was undergoing a maintenance service and although the Ministry was within its right to take legal action for the temporary and unauthorised halting of the service by the VGH, it sought to reach an amicable agreement instead. According to the MFH, the contestation regarding the helicopter service was eventually more permanently resolved through the purchase of a second helicopter, which gave rise to an increase in the annual fee payable by Government to the VGH from €1,200,000 to €1,700,000. The MFH representatives highlighted the benefit of this approach and other measures taken, such as the withholding of payments, in resolving issues in an efficient and effective manner.

6.2.103 The assertion on the part of the MFH that no breaches in services were brought to the attention of the QAB was deemed inconsistent with documentation reviewed by the NAO, wherein during a meeting of the QAB held on 20 November 2017, the Consultant MFH noted that there were 60 breaches of the concessionary agreement. In clarifications made to this Office, the Consultant MFH contended that the minutes of the QAB were erroneous and insisted that no such breach existed. While acknowledging the several complaints relating to the health service that was now overseen by the VGH, which he accordingly flagged, he maintained that these shortcomings did not constitute breaches since the service level remained the same. The Consultant MFH observed that while there was no improvement realised following entry into the concession, there was also no major drop in service levels

unless key staff resigned and difficulties were encountered by the Concessionaire in sourcing a replacement. Queried on the matter of breaches in service by the NAO, the Minister for Health maintained that the Consultant MFH was assiduous in ensuring that the VGH delivered to the required service levels and that matters warranting further attention identified by Government were soon after resolved. Despite explanations provided, the NAO remains uncertain as to why the provisions of the HSDA regulating the notification of perceived breaches to the QAB by the Government were not adhered to.

6.2.104 According to the HSDA, the VGH could not be penalised for any unused service requirements or be held liable to any service credits by the Government. In submissions made to the NAO regarding whether any periodical analysis was undertaken by the Government to identify any possible changes to the service requirements regulated by the HSDA, the MFH noted that service performance was being monitored through the QAB. The MFH stated that most efforts in this respect were concentrated on maintaining previous outputs, which the Ministry claimed were deteriorating, mostly due to retirements. In addition, the MFH argued that no new services could be contemplated in such a situation.

6.2.105 The HSDA referred to another potential source of revenue for the VGH, whereby the Concessionaire could charge patients and visitors for use of its parking facilities at all the sites at commercial rates. In this respect, the MFH noted that during the period under review, no parking charges were in place at the GGH and that a new parking area at the SLH was not operational due to a dispute with third party contractors.

6.3 Deciphering the obligations arising from the agreement for the payment of an additional concession fee

6.3.1 The agreement for the payment of an additional concession fee stipulated that the Government could claim payment from VGH Management Ltd of an additional concession fee, which fee was not to exceed €2,800,000. The Government was to submit a notice for payment in writing, on receipt of which, the VGH could, at its discretion, pay the additional sum if it was satisfied with the documentation submitted. Of note to the NAO was that, according to this agreement, the Government was to refund the paid additional fee to the VGH.

6.3.2 On requesting information for the basis of an additional concession fee to be claimed by the Government from the VGH, the NAO was provided with conflicting information. Initially, Projects Malta Ltd confirmed that the additional concession fee was included due to additional costs that were to be incurred relating to the expropriation of land from third parties, which cost was to be borne by the VGH.

6.3.3 Similarly, the Negotiation Committee stated that the agreement served to safeguard the Government should it be required to settle any unforeseen costs in relation to the access to the sites. The Negotiation Committee maintained that the VGH was only prepared

to pay €3,000,000, being the concession fee established at the negotiation stage, with a mechanism for an additional €2,800,000 put in place through the agreement for the payment of an additional concession fee. In submissions to the NAO, the Negotiation Committee asserted that the agreement for the Government to refund this amount would have had no ultimate effect on the Government considering the fact that the bidder had contended that in view of the tight returns to be received on Government beds, any additional costs imposed on it in excess of the €3,000,000 were to be recharged to the Government either by way of an increase in bed fees or any other mechanism available.

6.3.4 Conflicting information was also provided on whether a claim was made by the Government to the VGH regarding this additional concession fee. On one hand, the MFH confirmed that no claims were made with regard to this agreement. However, in response to further enquiries made, particularly in relation to the possibility of more than one additional concession fee, the MFH informed the NAO that the Government never requested any claims in addition to the €2,800,000, thereby, instilling doubt as to whether a claim had initially been made by the Government, or otherwise.

6.3.5 Projects Malta Ltd similarly failed to shed any light on whether the VGH paid the additional concession fee. In submissions to this Office, Projects Malta Ltd maintained that since they were not party to the Agreement regulating the payment of an additional concession fee, no information could be provided in this respect.

6.3.6 Of concern to the NAO was that the agreement catered for the Government to refund the additional concession fee to the VGH over a period of five years from the date of the payment. On requesting the reason for such an agreement, Projects Malta Ltd ambiguously advised this Office that Government agreed to refund the additional concession fee since the sum was over and above what was originally agreed on. On further enquiry, the PS MOT advised that Government movables included in the concession agreement comprised EU funded equipment still subject to a five-year durability period with the possibility of a partial claw back of the sum in question. The additional concession fee agreement made it mandatory for the VGH to settle any claw back in a timely fashion, with the Government agreeing to refund the amounts paid. The claw back was not to exceed €2,800,000, hence the reason for capping at this amount. In addition, the PS MOT informed this Office that the arrangement was made considering that the VGH bore no fault in this regard. Further enquiries directed at Projects Malta Ltd on the matter corroborated that stated by the PS MOT.

6.3.7 On enquiring whether any refunds were paid by the Government, the MFH informed this Office that no refund was applicable in this regard as there was no agreement to increase the concession fee, thereby casting an element of doubt on whether the Ministry was aware of the reason for entry into this agreement and how it was to be executed. Similarly futile were queries directed towards Projects Malta Ltd, as the NAO was informed that since Projects Malta Ltd was not party to the Agreement for the payment of an additional concession fee, it was therefore not in a position to provide the requested information.

6.3.8 The NAO also enquired why the agreement stated that the content should not be construed or interpreted as an amendment or variation to the Transaction Agreements. In this respect, Projects Malta Ltd stated that this was the case due to the fact that the EU funded equipment to which the additional concession fee related fell outside the scope of the Transaction Agreements.

6.4 The implementation of obligations arising from the Labour Supply Agreement and its addendum

6.4.1 Integral to the concession was the supply of staff by Government to VGH Management Ltd. This aspect was regulated by the LSA entered into on 8 January 2016 and its subsequent Addendum dated 30 June 2017. The list of resources, that is, the staff that were to be supplied by Government to the VGH, was specified in the Addendum. While the VGH was to take on and manage these employees from 1 June 2016 until the expiry of the 30-year concession term, the LSA emphasised that during this period, the leased employees were to be considered Government employees.

6.4.2 The NAO sought to obtain an understanding of whether the provisions in the LSA and its subsequent Addendum were complied with. Matters of interest in this regard comprised the establishment of the list of resources and the payments to be made in this respect, the contestation by the MFH of resource-related charges in the invoices issued by the VGH and other concerns emerging in relation to the implementation of the LSA.

List of resources and payments

6.4.3 Through the LSA, 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. Government was to supply VGH Management Ltd with the staff included in a list of resources. The LSA also included provisions regulating the payment of the resources. The specific list of resources and payments to be made in this respect were eventually included in the Addendum to the LSA dated 30 June 2017, and corresponded to a total of 1,536 employees for the three sites, with a capped fee of €32,234,637 to be paid by the Concessionaire to the Government annually.

6.4.4 The details pertaining to the list of resources and charges in relation to the resources were presented in a report, dated 16 September 2016, issued by RSM Malta. The report presented a variance analysis between the agreed costs (AC) in line with the RfP and the projected costs (PC) at handover stage. Figure 22 summarises the variance in headcount and staff costs presented in the RSM Malta report.

Figure 22 | RSM Malta report summary of variance in headcount and staff costs

Entity	Projected costs		Agreed costs		Variance	
	Number of staff	Staff cost (€)	Number of staff	Staff cost (€)	Number of Staff	Staff cost (€)
KGRH	636	18,254,753	510	13,112,967	126	5,141,786
Contracted	186	3,289,017	191	2,406,361	(5)	882,656
KGRH total	822	21,543,770	701	15,519,328	121	6,024,442
GGH	850	22,810,480	730	19,121,670	120	3,688,810
Contracted	152	4,756,479	49	3,400,813	103	1,355,666
GGH total	1,002	27,566,959	779	22,522,483	223	5,044,476
Dermatology	-	-	58	1,701,153	(58)	(1,701,153)
Total	1,824	49,110,729	1,538	39,742,964	286	9,367,765

Source: RSM Malta

- 6.4.5 In the RSM Malta report, the AC was defined as the total number of employees working at the sites during the period of issue of the RfP, comprising the staff employed at the KGRH (also encompassing the SLH) and the GGH, subcontracted staff and the staff employed at the Dermatology Unit and the relevant costs attributable thereto. On the other hand, the PC represented the projected number of staff and the corresponding costs of the employees working at the sites during the period of handover to the Concessionaire. The RSM Malta report analysed the difference between the AC and the PC, providing insight as to the reasons for these variances.
- 6.4.6 According to the RSM Malta report, the key variances between the AC and the PC arose due to several reasons, namely that:
- a in the period between the AC and the PC, certain costs, such as public sector costs, were omitted;
 - b overtime costs for employees under the Ministry for Family and Social Solidarity, attributable to the KGRH, were omitted from the AC computation;
 - c the PC contracted costs under the KGRH, between 2015 and 2016, were calculated at a higher rate charged for the service rendered;
 - d overtime costs and public holiday costs were omitted in the computation of the AC for the GGH;
 - e the AC were calculated on a portion of the 2015 actual expenditure whereas the PC were calculated based on 2016 actual expenditure and projections, resulting in the exclusion of collective agreement increases and employment turnover in the AC;
 - f 83 employees, identified as ‘shared consultants’ and falling under the GGH, were omitted from the computation of the AC; and

- g dermatology costs were omitted from the PC at handover stage, together with noted differences in the headcount between the AC and the PC.

6.4.7 The NAO further analysed the difference in the headcount between the AC at the RfP stage and the PC at the handover stage, noting that the number of such resources included in the AC were 510 and 730 for the KGRH and the GGH, respectively, collectively amounting to 1,240 resources and costing €32,234,637. Moreover, 58 employees of the Dermatology Unit with a total cost of €1,701,153 and 240 subcontracted employees at a cost of €5,807,174 were also included in the AC. In summary, the AC figures stood at 1,538 resources costing €39,742,964. On the other hand, the number of resources included in the PC was higher by 126 and 120 for the KGRH and the GGH, respectively, and by 115 subcontracted resources. This resulted in a PC difference of €5,141,786 and €3,688,810 for the KGRH and the GGH, respectively, and €2,238,322 for the subcontracted employees. As previously noted, the 58 employees working at the Dermatology Unit were erroneously omitted from the PC headcount, thereby reducing the PC total difference from €11,068,918 to €9,367,765. The total number of resources included in the PC at headcount stage were therefore 1,824, of which 636 and 850 were KGRH and GGH resources, respectively, while 338 were subcontracted employees. These headcount variances, together with the erroneously omitted costs elaborated on in the preceding paragraph, resulted in a total PC of €49,110,729.

6.4.8 On further analysis and communication with Projects Malta Ltd, it was noted that in the Side Letter to the Transaction Agreements dated 15 September 2016, that is, only one day prior to the issuance of the RSM Malta report, the Government had acknowledged that the previously agreed cost of €38,000,000 (€22,500,000 for the GGH and €15,500,000 for the KGRH) was an inaccurate value with respect to the resources to be deployed by the Government to the Concessionaire. It was in this context that Government accepted to bear the difference in such costs, amounting to €6,462,000 annually, which effectively increased its financial burden. This additional annual cost was negotiated to €6,000,000 as indicated in Figure 23. On requesting further information from Projects Malta Ltd as to the reason for this increase in costs, this Office was advised that the figure of €6,000,000 was obtained from the RSM Malta report, while considering deductions for the costs pertaining to the MDH employees and subcontracted resources.

Figure 23 | Projects Malta Ltd workings on the Side Letter to the Transaction Agreements of 15 September 2016

PC staff cost		€49,100,000
MDH resources at the KGRH	(€1,520,000)	
MDH resources at the GGH	(€838,000)	
Subcontracted workers at the KGRH	(€882,000)	
Subcontracted workers at the GGH	(€1,356,000)	
		(€4,596,000)
Revised staff cost		€44,504,000
AC staff cost less dermatology		(€38,042,000)
Difference		€6,462,000
Negotiated amount		€6,000,000

- 6.4.9 Having reviewed the Side Letter to the Transaction Agreements dated 15 September 2016 and the RSM Malta report, the NAO is of the opinion that Government's decision to assume responsibility for the annual cost of €6,000,000 arising out of the inaccurate determination of value with respect to the resources to be deployed was constrained by information provided during the RfP. During the site visit stage, the VGH, then a prospective bidder, was provided with the staff costs incurred by Government with respect to the GGH, the KGRH and the Dermatology Unit, totalling €39,700,000 (presented separately as €22,522,483, €15,519,328 and €1,700,000, respectively). It is evident that the €38,000,000 in staff costs pertaining to the GGH and the KGRH (as indicated in the Side Letter to the Transaction Agreements dated 19 May 2016) was not a realistic representation of actual costs and this Office understood that Government was obligated to assume the financial burden of the resulting discrepancy. This Office is of the opinion that a more rigorous process to determine staff costs prior to the issue of the RfP would have better safeguarded Government's interests.
- 6.4.10 The Addendum to the LSA, executed in June 2017, superseded the Side Letter to the Transaction Agreements dated 15 September 2016 and introduced a fixed list of 1,536 resources to be leased by the Government to the Concessionaire at an annual capped fee of €32,234,637.¹⁶ This figure was arrived at following the deduction of approximately €6,000,000 corresponding to the cost of subcontracted employees. This deduction can be linked to the AC figures illustrated in Figure 22, which correspond to the subcontracted resources for the KGRH and the GGH, amounting to €2,406,361 and €3,400,813, respectively. The MFH informed the NAO that despite the deduction in the total cost of resources from €38,000,000¹⁷ to €32,234,637, the Addendum to the LSA failed to specify that this revised amount would cover 1,240 resources rather than the previously quoted 1,536. This reduction in resources related to the removal of the 191 and 49 subcontracted resources for the KGRH and the GGH, respectively, and the 58 dermatology employees (Figure 22 refers). The outcome resulted in the Government receiving less in compensation than the actual value of the leased resources on an annual basis, since in effect the Government continued to provide 1,536 resources for the reduced compensation amount of €32,234,637.
- 6.4.11 The MFH confirmed its knowledge of the RSM Malta report and indicated that one of the main reasons for the Ministry's contestation of the amounts claimed by the VGH as payment for the leased resources was the discrepancy noted between the list of resources provided in the RSM report and the list included in the Addendum to the LSA dated 30 June 2017. Although the MFH had expressed its concerns prior to the Government's execution of the agreement, 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, this suggestion was not taken into consideration. While the Negotiation Committee

¹⁶ The total of €32,234,637 can be calculated by adding the two figures representing the staff costs for the KGRH and the GGH, €13,112,967 and €19,121,670, respectively, as illustrated in Figure 22.

¹⁷ The total of €38,000,000 can be calculated by adding the two figures representing the staff total costs for the KGRH and the GGH, €15,519,328 and €22,522,483, respectively, as illustrated in Figure 22. The total figure was rounded down to €38,000,000.

claimed that the MFH was involved in discussions with the VGH leading to the Addendum to the LSA, the PS MFH maintained that the detail included in the Addendum did not capture the concerns presented by the MFH 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.

6.4.12 The MFH provided the NAO with the analysis undertaken by the Ministry in relation to the RSM Malta report, highlighting issues raised within the report which the Ministry considered to be issues of concern. The main issue of concern for the MFH was that the RSM Malta report linked the total number of 1,536 resources to a monetary value of €42,000,000, which was deemed to represent the actual payroll of the hospitals, rather than the €32,234,637 capped fee that was to be reimbursed to the Government by the VGH, as stated in the Addendum to the LSA. Furthermore, the MFH noted that the RSM Malta report also linked the value of €32,234,637, to a total number of 1,240 resources rather than the 1,536 total stated in the Addendum to the LSA. This discrepancy created a variance of 296 resources between the list appended to the Addendum to the LSA and the list provided in the RSM Malta report. These discrepancies in terms of cost and resources were of concern to the MFH and resulted in disputes being lodged by the Ministry with respect to the settlement of invoices raised by the VGH. An example of a dispute presented by the MFH in this regard related to the difficulty in determining whether the cost of a transferred resource¹⁸ was to be reduced from the payment to be made by the VGH to the Government in respect of the leased resources. It is to be noted that, in accordance with the Addendum to the LSA, any wages attributed to a transferred resource should be reduced from the portion of the payment to be made by the VGH to the Government in respect of the leased resources. A complication arose in that the MFH deemed that a transferred resource that did not feature in the list of the 1,240 resources for which the Government was receiving compensation from the VGH was not to be deducted in the corresponding wages payable by the VGH. These circumstances created disputes between the parties as the VGH expected the Government to abide by the terms of the LSA, thereby deducting the value of the wages in question irrespective of whether the individual was included in the list of 1,240 resources or otherwise.

6.4.13 The MFH advised that one of the main issues accounting for the discrepancies in the number of resources was that several shared consultants employed by the MDH and providing services to the GGH and the KGRH were erroneously double counted in the list of resources as stated in the Addendum to the LSA. The MFH contended that this error resulted in an increase in the number of resources, incorrectly set at 1,536. In this context, the Ministry noted that the VGH charged Government whenever there was a change in the consultant servicing the hospitals. Elaborating in this respect, the MFH referred to

¹⁸ A Government leased resource that decides to transfer to direct employment with the Concessionaire.

several GGH employees, specifically citing 21 summer students, 83 shared consultants and one employee with a direct contract. On comparing the observations put forward by the MFH with that stated in the RSM Malta report, the NAO noted that this observation by the Ministry was incorrect, as the report classified these employees as 'omitted costs' rather than elements that should not have been included in the 1,536 resources as stipulated in the Addendum to the LSA.

- 6.4.14 A further observation made by the MFH was the incorrect inclusion of employees of the KGRH. Cited in this regard were 34 accountants/payroll/purchasing/HR officers provided by a contractor and several shared consultants from the MDH and other entities. The NAO was unable to identify these elements in the RSM Malta report. The review of correspondence exchanged between the MFH and the VGH provided an element of insight into the matter. When informed by the MFH of this incorrect inclusion of 34 contracted employees, the VGH acknowledged the error. Nevertheless, this Office was unable to verify these details as the required supporting documentation was not appended to the correspondence reviewed.

Contested invoices

- 6.4.15 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.
- 6.4.16 Based on the documentation provided, the NAO established that a bill presented in March 2017, corresponding to the period June 2016 to February 2017 and amounting to €2,028,693, remained partly unresolved, with the majority of the claims made by the VGH referred for discussion. Several items pertaining to this bill were agreed to by Government. These included entries relating to continuous professional development, medical physicist, audiologist outpatient and traditional Chinese medicine services, as well as the reimbursement of pharmaceutical and medical consumables, totalling €155,228. The remaining balance of €1,873,465, which specifically related to the cost of the Government leased resources, was contested by the MFH. Details relating to this pending amount are presented in the ensuing paragraphs.
- 6.4.17 Two of the issues that constituted Government's contestation related to amounts charged by the VGH in relation to payments made by the Concessionaire for public holidays occurring on Sundays between 2008 and 2012, as well as tax and national insurance costs due by the Government for the period before the concession. These amounted to €70,229 and €1,058,137, respectively. Following communication exchanged between the parties, it was agreed that the VGH would drop the claims for these amounts, thereby reducing the total outstanding balance to €745,049. This remaining balance corresponded to the cost of salaries of employees transferred from Government employment to direct employment with the VGH during the period June 2016 to March 2017. This amount was contested by the Government as the VGH had not obtained the relevant authorisation in accordance with the LSA prior to transferring the employees from Government employment to VGH direct employment. On

the other hand, the VGH sustained the claim, stating that according to the terms of the LSA it was the transferred employee who was to seek and obtain authorisation from the Government. On reviewing the terms of the LSA, the NAO noted that the position adopted by the VGH was correct as the LSA stipulated that it was the transferred resource who was to seek and obtain a release consent from the Government, with no reference made to the Concessionaire's obligation to obtain authorisation for the transfer of employees from Government employment to direct employment with the VGH.

6.4.18 On further review of the correspondence exchanged regarding the outstanding balance, the NAO noted that the Government had raised several issues with respect to the information provided by the VGH in relation to its claim, including:

- a the lack of identification numbers for the employees in question;
- b the lack of the dates of transfer of each resource;
- c the salary costs being claimed were not accurate with approximations being provided rather than exact figures; and
- d the fact that the VGH claim for reimbursement related to 2017 salaries included a five per cent Cost-of-Living Adjustment.

6.4.19 The NAO is of the understanding that the Cost-of-Living Adjustment was not part of the payment agreement as detailed in the LSA and was therefore not included in the Government's previous claim to the Concessionaire for the said employees' wages. Consequently, VGH's claims should not have included this adjustment.

6.4.20 The MFH identified several persons on the list who had not opted for direct employment with the Concessionaire and had therefore never been transferred, others who had been engaged directly by the Concessionaire with no previous employment with the Government, and individuals whose contract of employment with the Government had expired, which meant that no reimbursement for the costs of such employees was necessary. To facilitate future verifications, the Government requested that workings be provided by the VGH on a monthly basis, specifying the substantive grades increments, progression and basic wage increases, and that actual pay periods be indicated as opposed to being listed as generic monthly payments.

6.4.21 The MFH informed the NAO that the matter regarding the outstanding balance of €745,049 was eventually addressed, with agreement reached on the basis for the claim made by the VGH. The parties consented that this claim was to be discussed further with the revised amount to be incorporated in a new invoice. On further review and

communication with the MFH, this Office confirmed that the VGH claim for €745,049, was later included in the VGH invoice numbered 1010. The NAO also confirmed that this figure could not be specifically identified in the said invoice due to the change in the method of calculation, which resulted in changes in the amounts claimed.

6.4.22 Invoice 1010, issued in relation to costs incurred between June 2016 and December 2017, was the first invoice that solely related to staff movements in terms of the LSA. This invoice was also contested by the MFH, initially because the invoice incorrectly included a VAT component. On the MFH's request, the invoice was reissued eliminating the VAT component. However, the revised invoice included an unexplained increase of €102,288 in the entry relating to the payment due by the Government to the VGH, resulting in a total invoice balance of €3,832,122.

6.4.23 The MFH further contested this invoice and its workings in view of identified discrepancies in the amounts claimed, together with other issues noted, namely:

- a 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;
- b issues relating to the SLH staff that had left their employment;
- c discrepancies in the list of staff movements and figures;
- d the lack of documentation provided by the Concessionaire; and
- e the lack of proof provided by the Concessionaire to confirm that the necessary legal requisites and conditions as stipulated under the LSA were adopted and the lack of proper documentation and proof being provided by the Concessionaire to confirm that the costs indicated in the claim had been incurred.

6.4.24 The NAO reviewed invoice 1010 in further detail through reference to documentation provided by the MFH, analysing each of the issues raised. The Ministry's workings in relation to the identified discrepancies arising in relation to the VGH invoice 1010 are presented in Figure 24.

Figure 24 | MFH variances identified in VGH invoice 1010

Contested issue	VGH claim	MFH workings	Variance
KGRH movements	€86,228	€432,504	(€346,276)
GGH movements	€763,285	€567,075	€196,210
SLH staff that left	€2,139,202	€782,163	€1,357,039
GGH employees who joined VGH	€432,122	€110,483	€321,639
KGRH employees who joined VGH	€411,285	€358,162	€53,123
Total	€3,832,122	€2,250,387	€1,581,735

6.4.25 The first issue subject to dispute listed in invoice 1010 related to a VGH charge of €86,228 for 'Staff movements Excluding VGH Staff and SLH Staff between June 2016 to December 2017' for the KGRH. The MFH analysed the calculations of this amount and noted that the workings provided were again based on estimates of wages rather than accurate figures, and concluded that this amount, as stated in the documentation submitted by the VGH, was actually due to the Government rather than the other way around, with the figure being incorrectly stated in reverse in invoice 1010. The MFH workings in respect of KGRH movements resulted in a total of €432,504 in favour of the VGH, confirming the considerable difference between the methods of calculation adopted by both parties.

6.4.26 The MFH noted several issues in relation to the list of workings provided by the VGH with respect to the KGRH and GGH staff movement costs. In the latter case, the VGH's claim for €763,285 was countered by an MFH downward revision to €567,075. In sum, the issues concerning erroneous charges levied in terms of staff movements at the KGRH and the GGH comprised:

- a deductions for staff indicated as 'finished' whose details were included in the lists for 2016 and 2017;
- b bills provided for staff indicated as 'started' whose details were neither in the 2016 or 2017 list of resources;
- c bills provided for staff indicated as 'started' on the 2016 list but who were noted to have left employment instead;
- d deductions for staff indicated as 'finished' who were not included in the 2016 list but were included in the 2017 list of resources;
- e deductions for staff indicated as 'finished' who did not feature in either the 2016 or the 2017 list;
- f inclusions of staff employed with the contractor;
- g discrepancies in the VGH list of transferred resources; and
- h discrepancies between the original list of resources and that submitted by the VGH.

6.4.27 To be able to analyse and verify the bills presented, the Government requested the VGH to provide a list of documents. The NAO noted that, until the end of the period under review, these documents had not been provided to the MFH. The documents requested comprised:

- a a list of replacement resources of staff that joined the VGH to fill vacant posts, including the date of joining;
- b that linking each replacement resource to the resource who left, so that the Government would be able to verify that replacement costs had actually been incurred by the Concessionaire;
- c that necessary to verify that the Concessionaire had requested Government for the replacement of resources but Government did not provide a replacement from the internal resources; and
- d that required to verify that the resources were actually replaced (for example, the submission of Jobsplus forms) with corresponding bills that indicated the pro rata cost of resources based on actual 2016 payroll, not estimations, and computed from the date of replacement.

6.4.28 Of further note in communication exchanged between the parties was that the MFH reiterated the importance that all claims made by the VGH be in accordance with the contractual framework. Moreover, all replacements relating to employees on long leave for which reimbursement was requested were to be made following the submission of formal communication to the Government to replace the said resource, and after the Government failed to provide the resource. This documentation was to be provided to the MFH together with the claims for verification for use in subsequent reimbursements. In addition, these documents were to be substantiated with the relevant confirmations that the costs claimed were actually incurred, including official records of the employees whose vacant posts were filled by the VGH.

6.4.29 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 IT system would cater for the collection of information relevant to the process.

- 6.4.30 Also listed in invoice 1010 was a charge of €2,139,202 that related to staff who left their post at the SLH. This amount was also disputed by the MFH. The NAO was informed that, in June 2016, 57 employees stationed at the SLH had initially refused to transfer to the management of the Concessionaire; however, these employees were still included in the list of 1,536 resources as stated in the Addendum to the LSA. For this reason, the VGH filed a claim for the reimbursement of the salaries of these employees from the start of the contract, that is, June 2016, despite most of these employees either continuing with their employment contracts or not leaving or transferring from their employment immediately after the commencement of the concession contract. After a review of the salaries and actual employee movements, the MFH adjusted the charge by reducing the claim to €782,163.
- 6.4.31 An additional point of contention in relation to invoice 1010 related to the GGH and the KGRH employees who had transferred to direct employment with the VGH. The charges levied by the VGH in relation to these GGH and KGRH employees were €432,122 and €411,285, respectively. Following the MFH's review of these charges, the Ministry adjusted that payable to the Concessionaire in relation to the GGH and the KGRH as €110,483 and €358,162, respectively. The MFH contended that these amounts qualified as the correct refundable costs in accordance with the LSA. These adjusted amounts were settled by the MFH; however, the NAO could not confirm whether the VGH was in agreement with these readjusted settled figures. The NAO was informed by the MFH that no further payments were made to the VGH regarding the invoice bearing reference 1010, with the remaining balance remaining unpaid.
- 6.4.32 From information provided by the MFH, it was noted that the outstanding balance with respect to invoice 1010 was referred for resolution by mediation in terms of the LSA in accordance with the ICC mediation rules. Furthermore, the NAO noted that on presenting the documentation for the mediation process, the VGH claim for €3,832,122 was increased to €8,000,000, as detailed hereunder.
- 6.4.33 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 writing 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.

6.4.34 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 as replacement resources for the period June 2017 to 2018. 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. Grant Thornton verified the payroll costs, clinical certification, contracts of service, designation of employees, professional warrants, engagement, and termination dates, and estimated the total cost to be equal to €4,866,431 as opposed to the VGH claim of approximately €8,000,000. Of note 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 CFO VGH and such information could therefore not be provided in the said report.

6.4.35 The MFH informed the NAO that the Government agreed to pay the cost as established by Grant Thornton in 2019, 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 after taking into account the necessary adjustments and verified that the amounts of €110,483 and €358,162 (paragraph 6.4.30 refers) had been deducted from the total agreed costs before the payment was settled. In addition, it is to be noted that the agreement reached between 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, subject to the provision of the relevant information to the Government.

6.4.36 The NAO was informed that the advice provided through the mediation proceedings for invoice 1010 together with the issuance and acceptance of the Grant Thornton report changed the method of calculation for resource payments, which now also took into consideration the payment of the replacement resources. As the VGH had only been reimbursed for the replaced resources employed between 2016 and 2018, it was not in agreement with this arrangement, contesting that it had also incurred other employee-related costs, such as costs emanating from employee movements such as 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 for the period 2016 to 2020. The Advisor MFH was tasked with verifying 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.

6.4.37 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 for 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. Furthermore, the payment allowed the Government to limit the legal interest due.

Labour supply issues created through the concession agreement

6.4.38 In a meeting held with the NAO, the PS 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 with concern that the PS MFH argued 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 PS 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 PS MFH 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 locally preferred being based in Malta rather than Gozo, causing clinical, strategic and possibly operational problems.

6.4.39 A suggestion proposed by the MFH to circumvent this labour supply problem was the setting up of a staff rotation loop with the MDH, offering career path incentives that focus on professional development and remuneration. Under the current concession agreement, any personnel assigned specifically to Gozo would be isolated, making the possibility of monitoring, a function deemed integral to one's clinical development, difficult to maintain due to the low activity on the island. This resulted in only senior members of staff, who did not require monitoring due to their experience on the job, being able to work at the GGH under the circumstances. A rotational system was therefore perceived to be beneficial to address this situation. As the LSA did not incorporate the MDH and its staff in any way, the possibility of developing a system of staff rotation between the hospitals was eliminated, thereby leaving the GGH isolated despite the evident necessity of support.

The MFH argued that this contractual gap created a serious problem for Government, with the Ministry now forced to transfer staff from the MDH to the GGH on a permanent basis. Such transfers caused issues with members of the MDH Board as they resulted in wastage of the MDH's investment and resources given that MDH-trained employees were being removed from their posts and transferred to the GGH, creating unnecessary barriers and conflicts between the hospitals.

6.4.40 To provide insight on the matter, the MFH elaborated on a possible scenario that would have resulted had the cardiac suite been built in Gozo, equipped with professional staff trained and able to perform cardiac catheterization. This scenario was described as difficult to sustain, unless periodic staff rotation from the MDH was set up to man the unit, due to the low number of cardiac catheterization cases in Gozo. The MFH stated, that should professional skilled personnel be stationed permanently in Gozo to man this unit, the personnel would gradually lose their skills due to the low activity in the area. Moreover, the MFH contended that it would be very difficult to deploy personnel who would be willing to be permanently stationed in Gozo should such a unit be established at the GGH. The MFH asserted that this situation could readily be applied to the context of the MRI services and the additional operating theatres planned to be built in Gozo.

6.4.41 Another scenario referred to by the MFH in this regard related to the intended development of the GGH as envisaged in the concession, which would inevitably require the services of additional anaesthetists. The PS MFH explained that this additional requirement would result in a situation where the Government would be left with no alternative but to demand that the Chairperson responsible for anaesthetists at the MDH transfer the required number of anaesthetists to the GGH to sustain its operations, irrespective of any valid clinical grounds against such transfers. The PS MFH described the result of this situation as demotivating for all parties involved. It was in this context that the MFH maintained that the strain on resources created as a result of this concession constituted the most pertinent problem faced. The MFH noted 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 the 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.

Staff recruitment and management issues

6.4.42 The LSA catered for the supply of a fixed number of Government employees (the number of employees employed at the sites prior to the concession agreement), 1,536 in all, to be leased by the Government to the VGH and assigned under the management of the VGH at a fixed annual capped fee. Also stipulated in the LSA was that the number of 1,536 resources

was to always be kept constant, with replacements being provided by the Government for any possible shortfall. If the Government for any reason failed to provide a replacement for the shortfall in resources within 30 days, the VGH was to replace that member of staff directly. The LSA also provided the possibility for any of the Government resources to be transferred to the direct employment of the VGH should they decide to do so on obtaining a consent for release from the Government.

6.4.43 In a meeting held by the NAO with the MFH, several issues were highlighted regarding the design of the concession agreement and resulting repercussions in relation to staffing requirements for the sites. One of the main issues related to the system of dual control of employees introduced by the LSA, which created a broad array of problems. The DG Finance and Administration MFH stated that the situation would have been more practical had the employees left Government employment altogether to work directly with the VGH, as this would have eliminated many of the labour supply issues created by the concession agreement. Notwithstanding this, the MFH acknowledged that this option was not possible due to union involvement.

6.4.44 A further issue highlighted by the MFH related to the commitment for the Government to replace any shortfall in the number of leased resources to sustain the agreed fixed supply of 1,536 employees at all times. 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 Consultant MFH explained that should the Government need to replace the GGH employees by utilising staff from the MDH, a decision would need to be made as to the urgency of the demand for the required members of staff. The Consultant MFH cited the case of anaesthetists and noted that should the operations to be held at the GGH be of a less urgent category than those to be held 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 in terms of the resources to be supplied by the Government to the GGH. The PS 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 PS 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 of the concession agreement.

6.4.45 Of concern to the NAO was that the concession agreement was described by the PS MFH as an agreement with critical operational miscalculations due to the lack of a properly functioning HR system capable of creating a sufficient flow of staff for the GGH.

6.4.46 The labour supply issues caused by the concession agreements were also highlighted in a list of outstanding issues prepared by the VGH and presented to the Government, where

more than half the issues presented were HR-related. One issue cited by the VGH related to the agreements entered into by the Government and the MAM through which several restrictions were imposed on the VGH, 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 Minister for Energy and Health, the Parliamentary Secretary for Health, their respective Permanent Secretaries together with other senior officials and the Negotiation Committee, wherein human resource-related issues that required discussion, clarification and negotiation with the VGH were raised. In this correspondence, reference was made to meetings that had been held with the General Workers Union and the Malta Union of Midwives and Nurses, and to a forthcoming meeting with the MAM, and the salient HR issues that were to be discussed by Government with the VGH were highlighted. Based on the review of this documentation, the NAO established that these meetings were held in August 2015, that is, 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.

6.4.47 Based on discussions held with the MFH, the NAO understood that due to this agreement with the MAM and the recruitment decisions taken by the VGH, several problems were created with no effort made by the VGH to mitigate or settle any disputes directly with the MAM. On the contrary, the PS MFH affirmed that the VGH relied solely on the MFH to intervene and solve any of the problems created by the VGH itself with regard to the recruitment of personnel. Referring to the claims raised by the VGH cited in the preceding paragraph, the PS MFH emphasised that the Concessionaire's claims implying that the MFH was to blame for the labour supply problems and the shortage of staff experienced at the GGH were incorrect and unfair, as these issues were a result of the poor design of the concession agreements and the shortage of labour supply availability within the broader economy. The MFH representatives 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 shift the blame onto the Government. It was with a sense of frustration that the PS MFH noted how the industrial relations actions experienced caused serious problems and implications to the health services being delivered, giving rise to conflicts between the VGH and the MDH that the MFH tried to resolve to the best of its ability under the circumstances. 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.

6.4.48 The PS MFH and a member of the Negotiation Committee indicated that the initial plan was for the GGH to have its own recruitment process independent from the Government. The PS MFH stated that this plan had to be changed due to the MAM's insistence that any doctor recruited by any clinical operator had to be recruited through the streams provided for in the sectoral agreement. The MFH representatives stated that a two-day strike was held in this regard by the MAM. This situation regarding recruitment was described by the PS MFH as another design flaw in the contractual framework and evidence of the significant miscalculation of risk that should have been anticipated when the concession was being designed. The Partner RSM – a member of the Negotiation Committee – indicated 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, arising for example as a result of Government-induced wage increases, being borne by the VGH. The NAO was not in a position to verify that stated by the Partner RSM as no documentation was submitted to support that there was ever an intention for the staff at the sites to be recruited directly by the VGH. Regardless of that claimed by the Partner RSM, the RfP unequivocally stated that the staff employed at all sites were to be deployed to the concessionaire while remaining public service employees.

Mater Dei Hospital shared consultants

6.4.49 The MDH has provided a system of shared consultants for the GGH from before the execution of the concession agreements. In accordance with the SCA, this system was to be upheld in the same manner at no additional cost to the VGH. In submissions to the NAO, the Consultant MFH confirmed that this system continued in the same manner on entry into the concession agreements, with additional consultants being provided as necessary to ensure that the same level of service provided before the concession was maintained. It is to be noted that the LSA also caters for shared consultants as part of the list of resources attached to the Addendum to the LSA. The MFH informed this Office that despite the fact that the shared consultants were either included in the LSA list of resources or formed part of the previously provided services and were therefore paid for by the Government as MDH personnel, the VGH still requested the Government to provide additional compensation for their wages.

Resource constraints at the Gozo General Hospital Accident and Emergency Department

6.4.50 The Consultant MFH stated that, unlike the Accident and Emergency Department at the MDH, the GGH was manned by personnel who were general practitioners rather than specialists trained for casualty. The MFH representatives informed the NAO that this arrangement had been in place for several years and could readily be attributed to Gozo's

small size and the lack of availability of specialists. The MFH acknowledged that this situation was not attributable to some change arising following the introduction of the concession agreements and emphasised that patients were never affected by this situation. Elaborating on the matter, the MFH noted that since the GGH had always been manned by generalists, it was understood that the VGH was not expected to change this situation, as such a change would require the redeployment of further specialists from the MDH. The MFH noted that the MDH was already supplying two specialists a day to sustain the GGH, with the demand increasing in summer due to the increase in population in Gozo, thereby inducing further pressure on the MDH which the Ministry maintained was functioning at maximum capacity.

Non-payment of Social Security contributions

6.4.51 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 (PAYE) 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 corresponding to the LSA as discussed earlier in this section of the report. This matter was also referred to by the Minister for Health in a meeting held with the NAO. Correspondence submitted by the PS MFH to the VGH on the matter was reviewed by the NAO. Of serious note in this respect was an email sent by the PS MFH to the VGH, 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.

Subcontracted resources contracts

6.4.52 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 subcontractors by the effective date. In effect, this Office understood that as from the effective date, responsibility for the provision of these services shifted from Government onto the VGH. Notwithstanding this, the NAO noted that Government backtracked on the obligation of 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.

- 6.4.53 In this context, the Side Letter stipulated that the prorated amounts payable pertaining to the mentioned subcontractor contracts for the period from the effective date to 31 December 2016, amounting to €1,282,000, would be settled by the Government. Government's exposure to the ancillary costs that ought to have been borne by the VGH came to a close in June 2017, following entry into the Addendum to the LSA, which stipulated that the VGH was to bear the costs associated with subcontracted resources with effect from 1 January 2017.
- 6.4.54 Correspondence exchanged in July 2016 between the MFH and the GGH and reviewed by the NAO validated this Office's concerns. In response to the GGH's request for the MFH to finance ancillary services, as the GGH reportedly were short on funds, the DG Finance and Administration MFH pertinently indicated that the responsibility for the provision of such services rested with the VGH. Although this point was captured in other exchanges, the MFH ultimately conceded payment for these services.
- 6.4.55 In respect of payments due for the subcontracted resources, the MFH informed the NAO that the pro-rated amount of €1,282,000 had been settled by the Government by 31 October 2016. The NAO noted that the Addendum to the LSA referred to an augmented cost for the subcontracted resources amounting to €1,305,688 with no explanation provided for the difference in the figures cited, which resulted in an additional cost to Government of €23,688. On review of the payments made to the VGH, this Office confirmed that the augmented amount of €1,305,688 was paid in accordance with the Addendum to the LSA.
- 6.4.56 In sum, the NAO contends that the payment of €1,305,688 by Government to the VGH, facilitated through the Side Letter to the Transaction Agreements dated 15 September 2016 and the Addendum to the LSA, was irregular and unwarranted, for the HSDA stipulated that such services were to be provided by the VGH and therefore costs accordingly borne.

Other concerns

- 6.4.57 On review of the LSA, it was noted that even though the Agreement referred to minimum requirements for the positions to be held by the employees, no details were provided to clarify the cited minimum requirements. The MFH informed the NAO that all the employees deployed to the Concessionaire were deemed to have an acceptable level of competence, with relevant training provided when necessary. When requested to confirm whether any formal minimum requirements were drawn up post contract, the MFH referred to the meetings held by the QAB. This Office's review of minutes of meetings held by this Board corresponding to the period under review did not result in any information in this regard.
- 6.4.58 In submissions made to the NAO, the CEO GGH 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. Furthermore, the CEO GGH indicated that the DG responsible for HR within the MFH similarly 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 several problems and a lack of clarity. 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.

6.5 Analysis of the Emphyteutical Deed

Regulatory compliance

- 6.5.1 In its analysis of the Emphyteutical Deed, the NAO sought to establish whether the provisions of the Disposal of Government Land Act (now repealed)), which regulation applied at the time, were adhered to. Of specific interest to the NAO in this regard was the method of disposal of the sites at the SLH, the GGH and the KGRH.
- 6.5.2 In reply to queries raised by the NAO, the PS MOT informed this Office that the sites were disposed of in accordance with Article 4(b) of the Schedule to the Disposal of Government Land Act. Article 4(b) states the following, “Government land may be transferred by title of emphyteusis: ... (b) if it consists in land which is offered for an industrial project after applicant would have satisfied Government about the benefit which the project would render to the country’s economy and that it would create an adequate number of jobs.” This was corroborated in the Emphyteutical Deed, wherein the project was described as “being an industrial project within the healthcare industry, and which comprises the redevelopment and maintenance of the sites by the Grantee and the use of the sites by the Concessionaire for healthcare and ancillary services, will render to the country’s economy, including but not limited to the creation of an adequate number of jobs.” 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.
- 6.5.3 While disposal under the Schedule was deemed regular by the NAO, in this Office’s opinion, the considerations highlighted in this paragraph render the applicability of Article 3(1)(a) of the Disposal of Government Land Act a better fit. In this Office’ understanding, the basis of this disposal could have been better suited had reference been made to Article 3(1)(a), which stipulates that “No land which belongs to or is administered by the Government shall be disposed of unless such disposal is made in accordance with one of the following provisions, that is to say (a) after a call for tenders published in the Gazette in respect of the property proposed to be disposed of.” The rationale behind reference to Article 3(1)(a) is that the RfP covered the disposal of the sites and informed the bidders of the cost of the ground rent to be paid. In addition, the RfP specifically provided that the Concessionaire was to be granted real rights over the sites for the concession period through a temporary emphyteusis to enable it to provide the services it was entrusted with.

6.5.4 Another aspect of regulatory compliance considered by the NAO relates to conformity with state aid regulations. In reply to queries submitted by this Office in this regard, the State Aid Monitoring Board (SAMB) outlined that the concession and the Emphyteutical Deed were not referred to the Board. Further indicated by the SAMB was that it understood that the award of the concession followed an open public tendering procedure, which was also widely publicised in the Official Journal of the EU and the Malta Government Gazette, among others. While the PS MOT referred to issues of state aid primarily in relation to the rate that was to be charged as ground rent, the NAO understood that this matter was resolved internally without the need for formal referral to the SAMB. The NAO reviewed the State Aid Monitoring Regulations and noted that according to Article 3(3)(c), aid given to facilitate the development of economic activities that does not adversely affect trading conditions is to be considered compatible with the common market. In submissions to this Office, the SAMB stated that since public procurement regulations were followed and the concession was awarded on an open, transparent and non-discriminatory basis, no state aid implications arose. It was in this context that the NAO deemed the position taken by the SAMB as reasonable and considered no breach in terms of state aid regulations.

Valuation of the sites

6.5.5 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.

6.5.6 Queries to this effect were addressed to the PS MOT and the Lands Authority. In reply, the PS MOT stated that a disposal in terms of Article 4(b) of the Schedule to the Disposal of Government Lands Act (Chapter 268 of the Laws of Malta) did not require a valuation to be carried out. The Lands Authority indicated that since the sites were transferred to the MIP Ltd by virtue of Legal Notice 94/2016, effective on 8 March 2016 and in accordance with Article 2 of the Commissioner of Lands Ordinance (Chapter 169 of the Laws of Malta), the latter was responsible for the valuation of the properties through its specific policies.

6.5.7 The NAO sought to explore this matter further by enquiring with the MIP Ltd whether there existed a policy that regulated the assignment of value for government-owned land that was to be disposed of for industrial projects. The MIP Ltd informed this Office that its policy that regulated the grant of land administered by it only stipulated ground rent rates and not the assignment of land value.

6.5.8 The RfP established a ground rent rate of €11.65 per square metre per annum. In submissions made to the NAO, Projects Malta Ltd noted that this rate reflected that established by the MIP Ltd for grants of a similar nature. In this respect, the MIP Ltd submitted a rental policy to the NAO, specifying the rate to be applied in respect of each contract on its commencement, which rate was determined according to the year of execution of the contract. The prevailing rate for 2016 was €11.65 per square metre per annum.

6.5.9 Of relevance in the determination of the total ground rent payable is the extent of the built-up areas of the sites, for ground rent was only payable on this area. Queries to this effect were submitted to the MIP Ltd. In this regard, 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 in advance of the deed. In view of that stated by the MIP Ltd, the NAO directed queries regarding the determination of the extent of the built-up area to the Lands Authority. In turn, the Lands Authority informed the NAO that at that time it was only involved in the initial stages in so far as to ascertain that all the subject properties, prior to the transfer of the same to the MIP Ltd through the aforesaid legal notices, 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. In view of that stated by the MIP Ltd and the Lands Authority, the NAO was unable to determine which entity was responsible for determining the built-up area, since the Government entities involved provided conflicting information.

6.5.10 The NAO sought to confirm the areas cited in the Emphyteutical Deed with the records retained by the Lands Authority. The Lands Authority provided this Office with the estimated footprint of the built-up areas based on Land Registry base maps and orthophotos. In this respect, the Lands Authority noted that the built-up area for the GGH, the SLH and the KGRH was 19,510 square metres, 22,413 square metres and 5,895 square metres, respectively. The NAO compared the contracted ground rent amounts and the computed amounts based on the footprints provided by the Lands Authority (Figure 25 refers). 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 measurement attained through a full site survey. Nevertheless, the comparison of the ground rent amounts as contracted with those based on the Lands Authority site footprints 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.

Figure 25 | Comparison of ground rent as contracted with those based on Lands Authority footprints

Property	Lands Authority estimated footprint (m ²)	Ground rent payable based on Lands Authority footprint [A] (€)	Contracted amount [B] (€)	Difference in amount [B – A] (€)
SLH	22,413	261,112	309,188	48,077
KGRH	5,895	68,677	59,062	(9,615)
GGH	19,510	227,292	156,750	(70,542)
Total	-	557,081	525,000	(32,081)

6.5.11 In sum, 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. Nevertheless, the fact that the Lands Authority and the MIP Ltd negated responsibility for determining the built-up areas, and the discrepancy in site areas between the site area estimates provided by the Lands Authority and the implied site areas resulting from the ground rent established in the Emphyteutical Deed raise concerns regarding the accuracy of the site areas utilised in the Deed.

Adherence to contractual obligations

Ground rent payments

6.5.12 The NAO sought to verify whether payments were made by VGH Assets Ltd according to the conditions stipulated in the Deed. Figure 26 provides information on ground rent payments made in relation to the sites for the period March 2016 to March 2018. This Office ascertained that the amounts charged were paid in full within a maximum of three months from the invoice date.

Figure 26 | Ground rent payments

Property	Period		Invoice date	Payment date	Invoiced & payment amount	Contractual amount	Difference in payment
	From	To					
SLH	22/03/2016	21/03/2017	21/04/2017	17/07/2017	364,842	309,188	55,654
SLH	22/03/2017	21/03/2018	06/02/2018	19/04/2018	364,842	309,188	55,654
KGRH	22/03/2016	21/03/2017	24/04/2017	17/07/2017	69,693	59,062	10,631
KGRH	22/03/2017	21/03/2018	06/02/2018	19/04/2018	69,693	59,062	10,631
GGH	22/03/2016	21/03/2017	24/04/2017	17/07/2017	184,965	156,750	28,215
GGH	22/03/2017	21/03/2018	06/02/2018	19/04/2018	184,965	156,750	28,215

6.5.13 However, in its review of the ground rent payments charged, the NAO noted that the amounts invoiced and paid were higher than the values stipulated in the deed. The variance was equivalent to 18 per cent, with the Government receiving an additional yearly amount of €94,500 in its favour. The MIP Ltd explained that this difference was the VAT amount charged on the ground rent.

6.5.14 The NAO sought to verify whether VAT was to be levied on the ground rent charged. The Office of the Commissioner for Revenue (CfR) explained that there were several factors that were to be considered in the assessment of whether VAT was chargeable or otherwise. One factor related to the duration of the emphyteutical grant. The CfR noted that there was a distinction between an emphyteutical grant that does not exceed a period of 50 years, qualified as 'letting of immovable property', and an emphyteutical

grant that exceeds 50 years, qualified as a ‘transfer of immovable property’. The latter is always exempt without credit for VAT purposes. On the other hand, the letting of immovable property is subject to VAT under specific conditions. In relation to the temporary emphyteusis being granted by the MIP Ltd to VGH Assets Ltd, the CfR stated that since the emphyteusis was granted for a period of 30 years, it was appropriate for the VAT element to be charged on the ground rent.

6.5.15 The CfR also highlighted the conditions that must apply for VAT to be levied in cases of letting of immovable property. In this context, VAT applied when:

- a the supplier of the immovable property is a limited liability company;
- b the customer is a person registered under article 10 of the VAT Act; and
- c the customer is using the leased property for the purpose of the stated economic activity.

6.5.16 In its review of this matter, an element of doubt regarding the fulfilment of (a) arose. The CfR informed the NAO that, should the supplier be a public authority, the supply would be out of scope of VAT. In this case, it remained unclear to the NAO whether the supplier in the Emphyteutical Deed was the MIP Ltd, a limited liability company, or the Commissioner of Land, a public authority, and therefore out of scope. While the deed defines the MIP Ltd as the grantor, it also refers to the CEO MIP Ltd as appearing for and on behalf of the Commissioner for Land, acting in exercise of the powers conferred on him, qua Commissioner of Land, in terms of the Commissioner of Land Ordinance (Chapter 169 of the Laws of Malta). The ambiguity that arises in this respect is that regarding whether the MIP Ltd appears on the deed in its constitution as a limited liability company or on behalf of a public authority. The NAO reviewed Legal Notice 94 of 2016, as amended by Legal Notice 95 of 2016. These legal notices allowed the MIP Ltd to enter in the deed on behalf of the Commissioner of Land and vested in it the rights and responsibilities relating to the specified land as per the Commissioner of Land Ordinance. In further clarifications submitted to this Office, the Lands Authority affirmed that the administration of the properties was transferred in its totality to the MIP Ltd, with the Chair MIP Ltd granted the rights and obligations of all three sites. The Lands Authority noted that the then Commissioner of Land appeared on the Emphyteutical Deed solely for the purpose of confirming such a transfer. In this context, the NAO is of the understanding that the grantor is the MIP Ltd in its constitution as a limited liability company and therefore the ground rent charged to the VGH was subject to VAT.

6.5.17 The specific provisions of the Emphyteutical Deed regulating the payment of ground rent provide no guidance in this respect as no reference is made to whether VAT is to be charged. However, the deed does provide that all taxes, rates and other charges whatsoever in respect of land ownership, which may in the future be payable, shall be borne by the Grantee.

Site vacation by third parties

6.5.18 The NAO sought to establish whether the vacant possession of the sites, as specified in the Emphyteutical Deed, was achieved. Based on information sourced from the MIP Ltd, by the time VGH Ltd had transferred its shares to Steward Healthcare:

- a the Blood Bank, the Child Development Assessment Unit and the Detox Centre had not relocated;
- b the administration building at the GGH was occupied by the Ministry for Gozo;
- c Malta Enterprise had partially vacated the site; and
- d there were no other third parties occupying the sites that MIP Ltd was aware of.

6.5.19 Since the deed allowed for an extension to the timeframes for the release of the occupied sites if consented to by VGH Assets Ltd, the NAO enquired with the MIP Ltd whether consent for any extensions was sought and obtained. In this respect, the MIP Ltd indicated that requests regarding the extended use of the site were attended to by the MFH since the premises that were to be vacated fell under the Ministry's responsibility.

6.5.20 In submissions to the NAO, the MFH indicated that the Ministry had informed the MIP Ltd that fundamentally important issues relating to the concession that needed to be resolved remained pending. In this context, the MFH decided that no relocation costs were to be incurred by the Government. In addition, the Consultant MFH stated that since the VGH did not exhibit any interest in utilising the SLH, there was no reason why the Government ought to relocate entities operating from the site, particularly when one considered that the cost that was to be incurred by Government for relocation was estimated at approximately €4,000,000.

6.5.21 Elaborating on the Malta Enterprise premises within the larger SLH site, the MFH specified that the Malta Enterprise premises were not vacated since the VGH failed to secure the financing required to develop the hospital. Nevertheless, the MIP Ltd informed the NAO that Malta Enterprise had relocated part of its operations to Business First. Furthermore, Malta Enterprise informed the NAO that there existed no agreement with Government or the VGH regulating the use of its offices at the SLH site.

Insurance coverage

6.5.22 Insurance was taken out for all risks of physical loss or damage, in favour of VGH Ltd, VGH Assets Ltd and VGH Management Ltd, with Government included as an additional

insured party in accordance with the requirements of the deed. This policy was issued on 19 May 2016 for a term of one year, until 18 May 2017. According to the documents provided to the NAO, this policy was not renewed immediately, leaving an uninsured period of over one month. The policy was later renewed for a further period of one year on 1 July 2017 until 30 June 2018. The full declared value of the insurance policies was €315,180,000 for each and every loss, excess of deductibles. The all-risk policies also provided cover for twelve months ground rent payable as required in the deed. The NAO noted that the amount insured for the SLH ground rent (€260,000) did not match the amount stated in the Emphyteutical Deed (€309,188).

6.5.23 An additional policy was issued to cover the all-risk requirement titled 'Contract Works, Third Party Liability and Start-up policy' with a full declared value of €260,568,500. This policy was issued in October 2016 and covered the period under review. These policies were insured with Assicurazioni Generali S.p.A, brokered by Osprey Insurance Brokers and underwritten through a Lloyd's Broker, Marsh Ltd, with the Lloyd's Syndicate, whose representative in Malta was Lloyd's Malta Ltd care of Ganado Advocates.

6.5.24 A further requirement was for the Concessionaire to insure against third party liability following completion of the development obligations and throughout the original term and the extended term. This requirement was covered by several policies issued in addition to the all-risk policies. These included employers' liability and medical professional liability, public liability and products liability, each policy being issued in 2016 and renewed annually for the period under review in accordance with the deed.

6.5.25 On reviewing the policy schedules provided, the NAO noted that, inconsistent with that stipulated in the deed, while the Government was included as an additional party insured in all but one of the policies, the requirement for the grantor (that is, the MIP Ltd) to be included as a joint insured party on the policies was not satisfied as there is no mention of this entity in either of the policy schedules.

Notes of privilege

6.5.26 The NAO ascertained that a separate note of privilege was registered for each site. The value of each note was equivalent to the annual ground rent listed for each site, with the value of the three notes of privilege totalling €525,000. The notes of privilege indicated the MIP Ltd as the creditor and VGH Assets Ltd as the debtor and each specified that it constituted warranty for the punctual payment of the annual and temporary ground rent burdening the site and the faithful performance and observance by the debtor of the deed's conditions. The cause of preference was specified as a special legal privilege on the relevant sites.

Transfer of sites

6.5.27 The NAO also sought to determine whether the VGH transferred, assigned, disposed of, or alienated the sites, or any parts thereof, to third parties, and, in the affirmative, whether Government authorisation was sought. This Office was informed that the only consent granted by the MIP Ltd in the context of the Emphyteutical Deed was that relating to a change in the control of the emphyteuta. In this respect, on 3 January 2018, the MIP Ltd approved the transfer of shares of Bluestone Investments Malta Ltd in VGH Ltd, the latter being the shareholder of VGH Assets Ltd, to Steward Healthcare International Ltd. The request had been made on 27 December 2017 and the transfer eventually occurred on 16 February 2018. When asked whether any encumbrances were made on the sites, the MIP Ltd stated that, in 2017, it was notified of a loan facility of €1,000,000 extended to VGH Ltd by Agribank plc, which facility was secured by a first ranking special hypothec and a first general hypothec over the sites.

Chapter 7 | Classification of the project as on- or off-balance sheet

7.0.1 The NSO compiles Malta's General Government sector fiscal balance and transmits it to the European Commission as part of the Excessive Deficit Procedure (EDP) notification. Within this framework, the NSO assesses and reviews PPP and concession contracts between Government and the private sector to provide a statistical assessment of these assets, that is, whether such projects are recorded on or off the Government's balance sheet. At times, the level of materiality of certain contracts necessitates the involvement of Eurostat. In such cases, the NSO provides its statistical assessment for feedback from Eurostat.

7.0.2 In a meeting held with this Office, the NSO elaborated that one of the main objectives of Government in undertakings of this nature would be that the project is classified off the Government balance sheet. This would mean that the financing and the construction of the asset would not impact the public accounts at once but would be paid by Government over the contract term. Hence, the implications of the project being on the Government balance sheet would be that the project would be classified as part of Government's accounts, with a direct effect on the Government deficit/surplus and debt figures.

7.1 Defining the project as a public-private partnership or a concession in terms of its statistical assessment

7.1.1 According to the ESA (2010), PPPs are complex, long-term contracts between two units. In this respect, one unit acquires or builds an asset or a set of assets, operates it for a period and then hands it over to the other unit. While such arrangements are most often between a private enterprise (called the Corporation or Partner) and Government (called the Grantor), other arrangements are possible. PPPs involve a considerable capital expenditure to create or refurbish fixed assets by the Corporation, which then operates and manages the assets to produce and deliver services either to the Government or to the public on behalf of the Government. Further noted in the ESA (2010) is that Governments engage in PPPs for a variety of reasons, including the hope that private management will lead to more efficient production and access to a wider choice of financial sources, and to a decrease in Government debt. While during the contract period, legal ownership of the assets rests with the PPP contractor, once the contract period is over, the economic and legal ownership rests with the Government. The ESA (2010) also notes that there can be many variations in PPP contracts concerning, among others, the disposal of the assets at the end of the contract, asset operation and maintenance during the contracting period, and the price, quality, and volume of the services produced. Moreover, the ESA (2010) further elaborates that the assets generally have much lengthier service lives than the contract period, so that Government may control them, bear the risks and attain the rewards for the majority of their service lives.

- 7.1.2 On the other hand, the ESA (2010) notes that service concession contracts grant a company the exclusive right to provide certain services, such as, in the case of a public service concession, a private company entering into an agreement with the Government to have the exclusive right to operate, maintain and invest in a public utility.
- 7.1.3 In 'A Guide to the Statistical Treatment of PPPs', published in September 2016 by the European PPP Expertise Centre and Eurostat, the difference between PPPs and concessions in respect of their statistical treatment is elaborated on. The Guide notes that a PPP requires a government entity to be the direct source of the majority of the revenues that the Partner is entitled to receive under the contract and that this is the case whether the demand for or usage of the asset commenced from the government entity itself (such as a hospital paid for by a government entity on the basis of availability) or from users (such as a road, paid for by a government entity on the basis of demand). On the other hand, a project would be considered a concession if most of the Partner's revenues is obtained directly from the asset users. The Guide emphasises that Eurostat's definitions of PPPs and concessions are only applicable for statistical purposes and that different Member States' definitions may vary. The Guide continues to state that the fact that a contract is procured or contracted for under a specific domestic law, for instance, a public procurement law or a concession law, is not relevant to categorise whether the contract is a PPP or a concession for statistical purposes.
- 7.1.4 In 2016, the NSO analysed the contract granted by the Government to the VGH, with specific reference to statistical treatment, as a PPP.

7.2 Rules applying to the statistical treatment of a public-private partnership agreement

- 7.2.1 According to the MGDD - Implementation of ESA 2010, the assets involved in a PPP can be considered non-government assets in national accounts only if the Partner bears most of the risks and rewards attached to the assets. Therefore, the analysis of the allocation of risk and rewards between Government and the Partner is the key issue in determining the classification of such assets. The MGDD elaborates further on the assessment of risks. It notes that the notion of risk refers to the impact (on revenue or profit) of actions by one party (related to construction, maintenance operations and service provision) and/or the consequences of the behaviour of those for which the activity is carried out (such as a change in the service's demand by a government unit or by an end-user).
- 7.2.2 As noted by the ESA (2010), it is often challenging to determine whether it is the corporation or the Government that bears most of the risks and reaps the greater part of the rewards. The MGDD stresses that if all risks and rewards from the utilisation of the asset are incurred by the Partner, there would be no issue in classification. However, in most contracts and through various mechanisms, Government often takes back some of the rewards of the utilisation of the asset. The situation is similar when it comes to risk, with Government

taking back some of the project's risks. This creates issues with respect to the classification of PPPs, significantly increasing the likelihood that the PPP is classified on the Government's balance sheet.

7.2.3 The ESA (2010) outlines the following main risks and reward elements for assessment, with the MGDD providing guidance on the first three:

- a construction risk: covering cost over-runs, events like late delivery, respect of specifications or building codes, and environmental and other risks requiring payments to third parties;
- b availability risk: covering any additional costs such as maintenance and financing, and the incurrance of penalties relating to output volume and quality;
- c demand risk: covering demand variability;
- d residual value and obsolescence risk, covering the risk of asset devaluation at the end of the contract and the extent to which the Government has an option to attain the assets; and
- e the existence of grantor financing or granting guarantees, or of advantageous termination clauses particularly on termination on the operator's initiative.

7.2.4 Outlined in the ESA (2010) is that the risks and rewards rest with the operator if the construction risk and either the availability or the demand risks have been transferred. Majority financing, guarantees covering the greater part of financing, or termination clauses providing for the majority reimbursement of the finance provider on termination at the operator's initiative are deemed to be ineffective transfer of either of these risks. When the assessment of risks and rewards is inconclusive, a pertinent question is which unit has a decisive influence on the nature of the asset and how are the terms and conditions of the services produced with the asset established, particularly:

- a the extent to which the Government establishes the assets' design, quality, size, and maintenance; and
- b the degree to which the Government can ascertain the services produced, the units to which they are provided, and pricing.

7.2.5 The MGDD specifies that a basic rule with respect to risks is that the PPP assets are to be classified in the Partner's balance sheet and not in that of the Government if three conditions are met. First, the Partner must bear the construction risks. Second, the Partner must bear at least one of either the availability or demand risk; in some cases, both risks need to be borne by the Partner simultaneously. It was stressed in the MGDD that, in most contracts, only one kind of risk triggers the whole (or nearly the whole) payment from the Government to the

Partner; the payment is based either on availability indicators of the asset, or on use/attendance of the asset (such case is only observed when this is contingent on the final users and not on the government paying unit). The third condition is that the risks should not be incurred by Government through other ways, for example, through government financing, government guarantees and early redemption clauses. If these conditions are met, it is nonetheless important to consider all other mechanisms stipulated in the contract to check whether there could be an allocation of the risks to Government through other means. If the aforementioned three conditions are not met, or if the Government accepts the risks through another mechanism or benefits from most of the rewards, then the PPP would be categorised as a service purchase by Government with the assets recorded in the Government's balance sheet as government capital expenditure and a financial liability.

7.2.6 The MGDD notes that some sharing of risks between Government and the Partner is generally seen in partnerships. However, normal risks related to the economic ownership of the asset should be taken by the Partner if the asset will be classified in its balance sheet, and the risks incurred by the Partner must have a considerable impact on its profitability, under normal circumstances, and perhaps in some cases, on its solvency too, where there is to be a clear connection between the realisation of these risks and the actions (or absence thereof) taken by the Partner. In terms of the issue of the quantity of risks and rewards, in certain cases one criterion would be sufficient to reclassify the asset on the Government's balance sheet (construction risk, availability/demand risk, financing (including refinancing), early termination, force majeure). However, it was noted that in certain complicated cases, a specific analysis, through an additive global approach, was to be utilised when more features or particular contractual clauses, as such not separately sufficient, on the basis of the current methodological provisions, to categorise the asset in Government's balance sheet, would result in an insufficient transfer of economic ownership to the Partner.

7.2.7 The MGDD outlines that if the Government provides a minimum revenue guarantee or a minimum profitability level for the Concessionaire, then Government is to be deemed to bear most of the economic risks and the assets should be recorded on the Government balance sheet. From this viewpoint, the chief difference between concessions and PPPs drops.

7.3 The statistical treatment of the project as determined by the National Statistics Office

7.3.1 Documentation submitted to the NAO by MFIN included an email dated 8 June 2016 by the PS MFIN to the Minister for Finance stating that news of the signing of the health sector concession agreements had been received by the Ministry the previous week. The

PS MFIN expressed concern regarding the matter when noting that the Ministry ought to have been given early access to the draft agreements to be able to evaluate these from a public finance perspective. Elaborating in this respect, the PS MFIN noted that, in the absence of prior reference of the draft agreements, it was extremely important that the Ministry was provided with access to these agreements to determine their impact on public finances. Any financial commitments on Government's part would need to be factored in the year's revised estimates and in the budgetary estimates for the following years. The PS MFIN specified that without access to the agreements, the budgetary process would probably prove lacking. Another reason for requesting the agreements was to ascertain the concessionaire's obligations and financial models. If the latter mainly rested on the sale of health services to Government, the statistical classification of the relevant capital expenditure, in addition to the known impact of any government expenditure, would have to be ascertained. Astutely, the PS MFIN noted that the matter could impact Malta's public finances beyond the expectations of those who negotiated and entered into these agreements.

7.3.2 The following day, on 9 June 2016, the Minister for Finance submitted correspondence to the Minister within the OPM stating that the promised presentation, which was to include the financial details impacting public finances, had not taken place and that MFIN did not have access to the project's documents. In reply, the Minister OPM stated that in March, a presentation on the financials and impact on the budget had taken place in the office of the Chief of Staff OPM and further noted that an RSM Malta partner had dialled in from abroad for clarifications. However, the Minister within the OPM offered to meet to clear any misunderstandings. A presentation on the project and the financial aspects of the contracts entered into was eventually delivered on 23 June 2016. According to the documentation submitted to the NAO by MFIN, in attendance at this presentation were the Minister for Finance, the Minister within the OPM, the Minister for Health, the PS MFIN, the PS MFH, the DG Finance and Administration MFH, the Partner RSM, and the Chief of Staff MFIN.

7.3.3 In a meeting with this Office, the NSO specified that the PS MFIN had provided it with a copy of the contract in July 2016, with a request to provide an initial statistical assessment. The NSO explained that two reports regarding statistical considerations relating to the provisions included within the contractual framework to determine the accounting treatment of the project were submitted to the PS MFIN. Copies of the NSO assessment were also provided to the MFH and the MOT.

The National Statistics Office's initial analysis of the statistical treatment of the project

7.3.4 In its initial analysis report, submitted to the PS MFIN on 6 December 2016, the NSO identified two main provisions in the agreements considered to be very high risk, and which, on their own merit, would result in the project being classified on Government's balance sheet with an impact on the general government balance and debt, namely:

- a the payment of an annual minimum healthcare delivery fee through the HSDA; and
- b the termination payments through the SCA.

The NSO's initial analysis is outlined in the ensuing paragraphs.

Annual minimum healthcare delivery fee

- 7.3.5 The HSDA stipulated that the Government was to pay an annual minimum healthcare delivery fee of €72,856,500, which fee was to increase yearly by the highest of either two per cent or in accordance with the Consumer Price Index. According to the HSDA, the fee was active at the effective date but was to be payable as the milestones became available after their completion certificate. This fee was to be payable by the Government in all circumstances, even in situations where the minimum beds allocated to it by the Concessionaire were not fully occupied, bar in cases where the beds were unavailable as per the provisions of the Agreement.
- 7.3.6 It was noted in the NSO's report that in 'A Guide to the Statistical Treatment of PPPs', reference is made to minimum use and revenue guarantees, describing them as situations wherein the partner entering into the PPP contract with the public authority is guaranteed to receive a certain amount of revenue regardless of the asset's actual usage level. In the Guide, the Eurostat noted that any form of minimum use or minimum revenue guarantee influences the statistical treatment and automatically leads to the PPP being on the Government's balance sheet.

Termination payments

- 7.3.7 The SCA outlines certain termination payments to be paid by the Government to the Concessionaire, namely the lender's debt, which the Government was to assume in full in its own name and extinguish with or without the benefit of time, in case of termination of the contracts due to a concessionaire event of default (refer to paragraph 3.1.114 of this report).
- 7.3.8 In its analysis of the matter, the NSO refers to 'A Guide to the Statistical Treatment of PPPs', wherein Eurostat notes that PPP contract provisions that base the compensation payable on partner default on the senior debt outstanding (or a portion thereof) are similar to a financing guarantee and affect the statistical treatment. The effect of such compensation provisions on the statistical treatment must be assessed, in combination with other government financing provisions, according to other principles in relation to the authority or Government's participation in financing. The Guide stipulates that a government commitment to the financing of a project in any form and any amount influences the statistical treatment in the following manner:

- a if Government's financing commitment or any other support amounts to 50 per cent or more of the capital expenditure to be incurred for the asset's construction, the PPP is automatically recorded on the Government's balance sheet;
- b if Government's financing commitment or any other support is lower than 50 per cent but higher than 33 per cent of the capital expenditure to be incurred for the asset's construction, this is classified as very high importance;
- c if Government's financing commitment or any other support is lower than 33 per cent but higher than 10 per cent of the capital expenditure to be incurred for the asset's construction, this is classified as high importance; and
- d if Government's financing commitment or any other support is lower than 10 per cent of the capital expenditure to be incurred for the asset's construction, this is classified as moderate importance.

7.3.9 According to the NSO, the termination payment arising due to the concessionaire event of default is a form of guarantee where, in the eventuality of a partner's default, the Government has the obligation to pay the full debt, without taking into account any retendering or remediation costs. This minimises the partner's risk and classifies the PPP project on the Government's balance sheet.

Other matters

7.3.10 In its report, the NSO also noted that other provisions of the agreements could need to be assessed as they could influence the statistical treatment. Examples cited in this respect were the provisions in the SCA relating to the hand-back on lapse of the concession period, with the Government option to reverse the title of the KGRH and the GGH for a consideration of €80,000,000; and the termination payment paid by Government due to a Government event of default and due to a change in law. At the time of compilation of the NSO's report, the NSO was still evaluating these and other peripheral clauses. Also noted was that the NSO would implement the final statistical assessment of the concession by the March 2018 EDP.

Impact

7.3.11 The NSO also elaborated on the impact of the statistical classification of the PPP agreement on the Government balance sheet. It was noted that this resulted in an impact on the Government balance and debt, with an increase in Government gross fixed capital formation and a simultaneous increase in debt. At the time of compilation of its report, the NSO was in the process of establishing the estimated impact on the Government accounts. It was outlined that the PPP investment was to be included as public spending and its financing as public debt. It was noted that Government's payments to the partner would need to separate into the following economic components in the compilation of the National Accounts:

- a fees for services provided on an ongoing basis;
- b interest spending; and
- c amortisation of imputed loan.

The National Statistics Office's analysis on the statistical considerations of the project

7.3.12 Another report titled 'Statistical consideration of the Public Private Agreement between Government of Malta and Vitals Group Ltd' followed the initial report and was submitted by the NSO to the PS MFIN on 9 December 2016. Noted was that only the main statistical provisions identified in the agreements that are deemed high risk were identified. These provisions resulted in the project to be classified on the Government's balance sheet.

7.3.13 The report identified the following main contractual issues posing risks on the statistical classification of the project, with the first two provisions classifying the project as on-balance sheet for the Government on their own merit:

- a the minimum service delivery fee, which was a form of Government guarantee as the Concessionaire was provided with a minimum revenue irrespective of service usage;
- b termination payments in the case of termination due to a concessionaire event of default, where if the Concessionaire defaulted, Government would be responsible for the payment of any concessionaire debt;
- c 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 and whether the partner's investment and lifecycle costs were forecasted to be recoverable through the revenue it was entitled to receive during the concession term; and
- d the fact that HR were always to be considered as Government's employees, with Government keeping the risk of maintaining the required level of resources and collective agreement negotiations.

7.3.14 In view of the classification of the project as on-balance sheet by the NSO, the NAO sought the views of the Negotiation Committee on the matter, particularly in view that one of the primary objectives of the concession was that Government would register improvements to its health service without burdening the public coffers. In a meeting held with this Office, the Negotiation Committee noted that there had been a change in the directive regulating the classification of the concession in 2016. The Negotiation Committee confirmed that at the time the agreements were entered into, the project was classified as off-balance sheet. Elaborating in this respect, the Negotiation Committee indicated that prior to the change in regulations, Eurostat followed three criteria when classifying transactions as on or off-balance sheet, which criteria were operational risk,

capital construction risk and revenue potential. The Negotiation Committee stated that the VGH was responsible for the capital construction risk and the operational risk. Regarding the revenue potential, the Negotiation Committee argued that though Government was carrying part of this risk, so was the VGH. Moreover, the Negotiation Committee stated that for the concession to be classified as off-balance sheet, two of the three criteria were to be met and that at the time of entry into the agreements, they were.

7.3.15 The NAO confirmed an element of that stated by the Negotiation Committee, in that, in March 2016, Eurostat published a revised MGDD. This implied that at the time of entry into the concession agreements, the MGDD that guided classification as on- or off-balance sheet was that issued in 2014. When the concession agreements were brought to the attention of the NSO, that is, in July/August 2016, a new MGDD had been released by Eurostat. The NSO asserted that the Manual constitutes official Eurostat guidance, and therefore PPP contracts that reached financial close after the date of its publication were to be assessed in terms of the 2016 MGDD. In the case of the VGH concession, financial close had not been achieved at the point when the concession agreements were referred to the NSO, and therefore correctly applied the 2016 MGDD in its assessment.

7.3.16 Nevertheless, and more important in the context of this concession, was that asserted by the NSO when dismissing the point raised by the Negotiation Committee that assessment under the 2014 MGDD would have resulted in an off-balance sheet classification. The NSO maintained that even if the concession agreements were assessed in terms of the 2014 MGDD, the main issues highlighted by the NSO in its assessment would have still resulted in the PPP being classified as on the government balance sheet.

7.4 Exchanges in the aftermath of the analysis carried out by the National Statistics Office

7.4.1 On 12 December 2016, the Minister for Finance submitted correspondence to the Prime Minister, copying the Deputy Prime Minister, the Minister within the OPM, the Chief of Staff OPM and the Chief of Staff MFIN and informed him about the NSO's findings. The Minister for Finance specified that unless the contractual issues posing risks to the statistical classification of the project were addressed, the project would be deemed a Government one, and all expenditure related to it, including capital expenditure, would be deemed as Government expenditure. It was noted that such an outcome would undoubtedly change the cost-benefit fundamentals of the project. The Minister for Finance noted that he had called a meeting with the Minister within the OPM and other senior officials to discuss the matter and a possible way forward.

7.4.2 On 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, copying the Prime Minister, the Deputy Prime Minister, the Chief of Staff OPM and the Chief of Staff MFIN replied that discussions of clauses had been reopened with the VGH.

7.4.3 On 7 September 2017, in correspondence sent to the Minister within the OPM, copying the Prime Minister, the PS MFIN and the Chief of Staff OPM, the Minister for Finance stated that the VGH agreement was the subject of ongoing technical discussions with respect to its eventual statistical classification. This classification was important given the potential impact of the agreement on the Government balance sheet, including higher government spending and therefore a higher deficit (or lower surplus) and higher public debt. The Minister within the OPM was requested to emphasise the need of the technical team to expedite their review to address the outstanding matters conclusively and satisfactorily.

7.4.4 On 20 September 2017, in reply to correspondence submitted by the PS MFIN, wherein updates on the matter were sought, the DG NSO specified that the NSO's position was unchanged and that the Minister for Finance had recently been updated in this regard. A summary of the current situation had been prepared and the NSO's initial evaluation had been provided. The DG NSO cited that this evaluation was the same as that discussed with the PS MFIN. Further noted by the DG NSO was that the PS MOT had been informed of the NSO's willingness to address the matter as the NSO was planning to report in March 2018. Acknowledged in this correspondence was that the PS MOT had informed the DG NSO that he expected changes in the agreement. Notwithstanding this, the DG NSO reiterated that the NSO's position remained unchanged and that on the basis of the information available, the project would be on the Government's balance sheet. However, the NSO was open to consider revising its position if the contract was changed. The NSO was hoping to utilise expertise from Eurostat to finalise its evaluation and hoped to obtain further information from the MOT before the mission came to Malta. The DG NSO concluded by stating that meanwhile, he was informed by the Public Finance Unit that the recording of fees currently being paid to VGH was in accordance with prevailing methodology.

7.5 Eurostat's guidance on the classification of the project

7.5.1 In a meeting with the NAO, the NSO explained that during the May 2018 Eurostat EDP dialogue visit to Malta, the statistical classification of the VGH-related agreements was thoroughly discussed. Eurostat agreed with the NSO's statistical assessment related to the first and second provisions highlighted in its second report, that is, provisions relating to the minimum service delivery fee and termination payments due to a concessionaire event of default, respectively. On the other hand, the third and fourth risks were not deemed material. These risks related to the reversal of the KGRH and the GGH title, and the human resources being considered as Government's employees, respectively. Up to that point, Eurostat were not in possession of a complete copy of the contracts as the NSO did not have permission by the relevant authorities to submit them. At that stage, Eurostat warned Malta that unless it was granted full access to the contracts, the assets would automatically be placed on the Government's balance sheet. Following an EDP

action point specifically concerning the provision of these contracts, on 3 June 2018, the NSO made available the agreements to Eurostat.

7.5.2 Following an analysis of the contracts and the NSO's statistical assessment, Eurostat provided its assessment on 9 July 2018. Eurostat confirmed that the first two issues led to an automatic on-balance sheet recording, while the other two issues were deemed not statistically relevant. In sum, Eurostat outlined that there were six elements that bore statistical relevance, namely the:

- a minimum revenue guarantee;
- b provision on the termination due to a concessionaire event of default;
- c open-ended list of force majeure events, which allowed for other possible events not specified in the contract;
- d 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;
- e 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
- f 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.

7.5.3 The NSO informed the NAO that the Eurostat's assessment was provided to the PS MFH, the PS MOT and the PS MFIN on 10 July 2018.

7.6 Conclusion

7.6.1 In conclusion, the NSO explained to the NAO that although it had provided its assessment on the classification of the VGH-related concession in December 2016, the NSO had allowed the relevant authorities time to address the risks identified in its report. The first time the records for the PPP healthcare project appeared in the EDP notification inside the General Government sector – that is, on the Government balance sheet – was in 2019, with revisions being made for previous years. 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 figures included in this respect were €656,482 in 2015, €4,318,625 in 2016, €5,378,000 in 2017, €16,121,000 in 2018 and €15,984,000 in 2019.

Chapter 8 | A review of the Concessionaire's financial statements

- 8.0.1** As part of the NAO's audit of the concession awarded to the VGH, this Office sought to review the Concessionaire's audited financial statements for the years under review, namely, 2015 to 2017. It was with grave concern that the NAO noted that the VGH failed to submit any of its companies' audited financial statements during the period under review, that is, until February 2018.
- 8.0.2** The 2015 and 2016 financial statements of the three companies were eventually submitted to the Registrar of Companies (ROC) on 19 February 2020, while the financial statements for 2017 were presented on 23 March 2020. These financial statements were in effect submitted following the change in ownership of the companies and therefore were submitted under the names of Steward Malta Ltd, Steward Malta Management Ltd and Steward Malta Assets Ltd. However, these submissions corresponded to the financial statements of the VGH Ltd, VGH Management Ltd and VGH Assets Ltd, respectively.
- 8.0.3** Note must be made that since the companies were registered on 13 May 2015, the financial statements for 2015 cover the period from 13 May 2015 to 31 December 2015. Moreover, for the years 2016 and 2017, Steward Malta Ltd presented consolidated financial statements for the three companies. However, for the purpose of the NAO's analysis, the companies' financials were separately reviewed.
- 8.0.4** The submission of yearly financial information allows related parties, in this case, the Government, to undertake appropriate and adequate analysis of the financial situation of the Concessionaire. Aside from obligations to this effect imposed by the SCA and the HSDA, the visibility afforded through the submission of statutory financial information would have allowed the Government to ensure that the concession was being operated in a sustainable manner, that the VGH was in a position to honour its financial obligations, and that public funds were being put to appropriate use thereby reducing the risk of fraud and misappropriation. In this case, the VGH's failure to submit the required financial reports precluded Government from establishing insight in this regard.

8.1 Financial statements of Steward Malta Limited, formerly Vitals Global Healthcare Limited

- 8.1.1** VGH Ltd was registered in Malta on 13 May 2015. This company was completely owned by Bluestone Investments Malta Ltd and its directors were Mark Edward Pawley and Ram Tumuluri. VGH Ltd had an authorised and issued ordinary share capital of €1,200 divided into 1,200 shares at €1 each. The main objective of VGH Ltd, as established in

its Memorandum and Articles of Association, was that of acquiring and holding, buying and or selling and otherwise deal in shares, membership interests, stocks, bonds, debentures or securities of or in any company or body of persons.

- 8.1.2** The share capital of VGH Ltd, set at €1,200, was a matter of concern highlighted by the MFH in a meeting held with the NAO. The MFH representatives questioned the award of a project of a value of hundreds of millions of euro to a company with a net asset value of €1,200. Similar concerns were raised in terms of Government's acceptance of a parent company guarantee given this limited share capital.
- 8.1.3** A new Memorandum and Articles of Association was registered with the ROC on 10 November 2016, wherein the registered address of the company was changed. Shortly thereafter, on 14 November 2016, Ram Tumuluri was appointed as company secretary following the resignation of Jonathan Vella. On 16 February 2018, the shareholding of VGH Ltd was transferred, wherein Bluestone Investments Malta Ltd transferred 1,140 of its ordinary shares to Steward Health Care International Ltd. The remaining 60 shares were transferred to Ashok Rattehalli. New directors were also appointed, namely, Armin Ernst and Michael Callum. Moreover, the authorised share capital of the company was increased to two hundred million ordinary shares of €1 each, to a value of €200,000,000. On this day the registered address of the Company was also changed to '171, Old Bakery Street, Valletta'. The company name was changed to Steward Malta Ltd on 10 April 2018, following an extraordinary shareholders' resolution.
- 8.1.4** The financial statements for 2015 described the principal activity of VGH Ltd as a holding company. VGH Ltd had two subsidiary companies, VGH Management Ltd and VGH Assets Ltd, holding 100 per cent of the shares in each. The financial statements for 2015 noted that the ultimate controlling party as from the registration date was Bluestone Investments Malta Ltd, which owned 100 per cent of the share capital of VGH Ltd. This situation persisted until the transfer of shares in February 2018, wherein VGH Ltd was then controlled by Steward Healthcare International Ltd. The principal activity of VGH Ltd, together with its subsidiaries, changed in 2016 following the signing of the SCA with Government. Noted in the financial statements was that the effective date of the SCA was 1 June 2016.
- 8.1.5** Across the three years under review, VGH Ltd incurred yearly losses, which resulted in total accumulated losses of €22,052 in 2017 (Figure 27 refers). VGH Ltd did not earn any revenue during this three-year period, while its expenses increased slightly over these years. The main expense incurred by VGH Ltd included under 'Administrative Expenses', was the auditor's remuneration. This increased from €2,000 in 2015 to €7,500 yearly for 2016 and 2017.

Figure 27 | VGH Ltd income statement, 2015-2017

	2015 (€)	2016 (€)	2017 (€)
Revenue	-	-	-
Administrative expenses	(5,645)	(8,207)	(8,110)
Finance costs	(30)	(30)	(30)
Profit/loss	(5,675)	(8,237)	(8,140)

8.1.6 The total assets of the company also 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 (Figure 28 refers).

Figure 28 | VGH Ltd assets, 2015-2017

	2015 (€)	2016 (€)	2017 (€)
<i>Non-current assets</i>			
Financial assets	-	-	1,200
	-	-	1,200
<i>Current assets</i>			
Trade and other receivables	-	1,359	1,288
Cash and cash equivalents	500,170	140	110
	500,170	1,499	1,398
Total assets	500,170	1,499	2,598

8.1.7 The NAO also noted a significant decline in trade and other payables from €504,645 in 2015 to €23,450 in 2017. Trade and other payables consisted of related company payables and accruals (Figure 29 refers). The payables to related parties, which amounted to €502,226 in 2015, arose mainly from the financing of expenses in relation to Bluestone Investments Malta Ltd. These payables were unsecured, interest free and had no fixed date of repayment. As illustrated in Figure 29, the related company balances had decreased substantially by 2017, and stood at €3,213.

Figure 29 | VGH Ltd trade and other payables, 2015-2017

	2015 (€)	2016 (€)	2017 (€)
Related company payables	502,226	2,883	3,213
Accruals	2,419	11,328	20,237
Total trade and other payables	504,645	14,211	23,450

8.1.8 The substantial decline of the current liabilities over the years reviewed coincided with a decline in the current assets, which resulted in VGH Ltd registering an increasing negative working capital. Working capital is an indicator of the financial position of a company in the short-term and is used as a measure of its overall efficiency. Similarly useful in understanding the financial status of a company is the current ratio, which serves as an

indicator of whether the short-term assets of the company are sufficient to cover its short-term debt. Sufficient working capital is usually indicated by a current ratio of between 1.2 and 2. In the case of VGH Ltd, the current ratio is less than 1, thereby an indicator of negative working capital (Figure 30 refers).

Figure 30 | VGH Ltd working capital and current ratio, 2015-2017

Working capital calculation	2015 (€)	2016 (€)	2017 (€)
Current assets	500,170	1,499	1,398
Current liabilities	(504,645)	(14,211)	(23,450)
	(4,475)	(12,712)	(22,052)
Current Ratio (current assets/current liabilities)	0.99	0.11	0.06

8.1.9 Also cited in the notes to the financial statements was that, as at 31 December 2017, one of the company's and group's contractors had a performance guarantee in place on behalf of the company in favour of the Government in respect of the SCA amounting to €9,000,000. In addition, reference was made to another contingent liability in respect of guarantees given to third parties, amounting to €910,301.

8.2 Financial statements of Steward Malta Management Ltd, formerly Vitals Global Healthcare Management Ltd

8.2.1 VGH Management Ltd was registered in Malta on 18 May 2015. As indicated in the preceding section of this Report, VGH Management Ltd was owned by VGH Ltd. The directors of VGH Management Ltd were Mark Edward Pawley and Ram Tumuluri. The main objective of the company, in accordance with the Memorandum and Articles of Association, was that of renting, developing, maintaining and running all types of buildings, including but not limited to hospitals, medical centres and nursing homes. The share capital of VGH Management Ltd was of 1,200 ordinary shares at €1 each, therefore the company had an authorised and issued share capital of €1,200.

8.2.2 Similar to VGH Ltd, a new Memorandum and Articles of Association was registered with the ROC on 10 November 2016, wherein the registered address of the company was changed. On 14 November 2016, Jonathan Vella resigned from the post of company secretary and Ram Tumuluri was appointed in his stead. On 16 February 2018, new directors were appointed to manage the company, namely Armin Ernst and Michael Callum. On this day, a new Memorandum and Articles of Association was registered, which included a change in the registered address and in the main objective of the Company. The main objective of VGH Management Ltd, as established in the revised Memorandum and Articles of Association, was that of acquiring and holding, buying and or selling and otherwise deal in shares, membership interests, stocks, bonds, debentures or securities of or in any company or body of persons. Similar to VGH Ltd, the name of VGH Management Ltd was changed to Steward Malta Management Ltd during a shareholder's general meeting held on 10 April 2018, following an extraordinary shareholders' resolution. The registered address was again revised.

8.2.3 The NAO reviewed the audited financial statements of VGH Management Ltd for the years 2015 to 2017. During 2016 and 2017, VGH Management Ltd registered substantial revenues, mainly through its agreements with the Government; however, this income was not enough to cover the substantial expenses incurred by the company, and therefore, VGH Management Ltd ended the financial year 2017 with accumulated losses of €26,012,619 (Figure 31 refers).

Figure 31 | VGH Management Ltd income statement, 2015-2017

	2015 (€)	2016 (€)	2017 (€)
Revenue	-	34,575,442	69,344,771
Direct costs	-	(29,966,871)	(59,820,583)
Gross profit	-	4,608,571	9,524,188
Administrative expenses	(2,798,045)	(8,621,267)	(25,100,370)
Finance costs	(27,802)	(1,292,276)	(2,305,618)
Profit/loss	(2,825,847)	(5,304,972)	(17,881,800)

8.2.4 The revenue earned by VGH Management Ltd is presented in Figure 32. The published financial statements did not provide any details regarding the source of the other income earned by the company.

Figure 32 | VGH Management Ltd revenue, 2015-2017

	2015 (€)	2016 (€)	2017 (€)
Government allocation	-	29,750,000	55,165,000
Air-ambulance allocation	-	416,667	1,011,667
Other income	-	4,408,775	13,168,104
Total revenue	-	34,575,442	69,344,771

8.2.5 The nature of the expenses incurred by VGH Management Ltd were reviewed by the NAO and are illustrated in Figure 33. The majority of the expenses incurred by VGH Management in 2015 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, this Office noted that it was still of a material value, comprising 27 per cent of the expenses in 2016 and 28 per cent in 2017. The major expense for 2016 and 2017 was staff costs. These comprised the salaries of Government employees, subcontracted staff and other wages and salaries. Also of note is 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.

Figure 33 | VGH Management Ltd direct costs, administrative expenses and finance costs, 2015-2017

	2015 (€)	2016 (€)	2017 (€)
Depreciation	-	23,380	35,831
Auditor's remuneration	2,000	24,000	35,000
Directors' remuneration	621,918	1,037,378	6,096,633
Staff costs	93,000	26,825,199	54,067,577
Increase in provision for bad debts	-	-	94,924
Other expenses	2,081,127	10,678,181	24,590,988
Finance costs	27,802	1,292,276	2,305,618
Total	2,825,847	39,880,414	87,226,571

8.2.6 The assets of VGH Management Ltd for the years 2015 to 2017 were reviewed by the NAO (Figure 34 refers). The non-current assets of VGH Management Ltd comprised improvements to premises, office and computer equipment, air-conditioners, software and furniture, fixtures and fittings.

Figure 34 | VGH Management Ltd assets, 2015-2017

	2015 (€)	2016 (€)	2017 (€)
Non-current assets			
Property, plant and equipment	-	168,265	195,022
	-	168,265	195,022
Current assets			
Inventories	-	848,073	991,819
Trade and other receivables	68,000	1,562,378	6,017,919
Cash and cash equivalents	170	1,153,591	159,562
	68,170	3,564,042	7,169,300
Total assets	68,170	3,732,307	7,364,322

8.2.7 The current assets of VGH Management Ltd, as presented in Figure 34, comprised inventories (in 2016 and 2017), trade and other receivables and cash and cash equivalents. The inventories for 2016 and 2017 amounted to €848,073 and €991,819, respectively, and included pharmacy and general store items. The substantial element constituting the current assets of VGH Management Ltd was trade and other receivables. A breakdown of these receivables is presented in Figure 35. Noted in the financial statements was that the trade receivables were stated net of a provision for bad debts amounting to €94,924.

Figure 35 | VGH Management Ltd trade and other receivables, 2015-2017

	2015 (€)	2016 (€)	2017 (€)
Trade receivables	-	152,878	744,916
Related company balances	-	325,466	3,989,824
Advance deposits	25,000	216,537	411,577
Payments in advance	25,000	-	-
Prepayments	18,000	687,497	691,602
Other receivables	-	180,000	180,000
Total trade and other receivables	68,000	1,562,378	6,017,919

8.2.8 The NAO noted a significant decline in cash and cash equivalents, particularly in cash held at the bank, between 2016 and 2017. This decreased from €1,152,509 to €156,686, further exacerbating the working capital position (Figure 34 refers).

8.2.9 On the other hand, the capital and reserves of VGH Management Ltd comprised the share capital of the company and the accumulated losses incurred up to 2017. The current liabilities consisted of trade and other payables and, in 2017, an amount of €896,163 related to interest-bearing borrowings (Figure 36 refers).

Figure 36 | VGH Management Ltd equity and liabilities, 2015-2017

	2015 (€)	2016 (€)	2017 (€)
Equity and liabilities			
Capital and reserves			
Called-up issued share capital	1,200	1,200	1,200
Accumulated losses	(2,825,847)	(8,130,819)	(26,012,619)
	(2,824,647)	(8,129,619)	(26,011,419)
Liabilities			
Current liabilities			
Interest-bearing borrowings	-	-	896,163
Trade and other payables	2,892,817	11,861,926	32,479,578
	2,892,817	11,861,926	33,375,741
Total equity and liabilities	68,170	3,732,307	7,364,322

8.2.10 In turn, the trade and other payables of VGH Management Ltd comprised trade payables, related company payables, accruals and indirect taxes, as presented in Figure 37. For 2015, the related company payables corresponded to payables in respect of associate companies. In 2016, the related company payables were €1,359 in respect of VGH Ltd and €2,758,249 in respect of associates (Bluestone Investments Malta Ltd and VGH Assets Ltd). During 2017, there was a significant decline in the payables due to associate companies, resulting in a year-end balance of €1,184,145, while €1,288 was due to VGH Ltd.

Figure 37 | VGH Management Ltd trade and other payables, 2015-2017

	2015 (€)	2016 (€)	2017 (€)
Trade payables	452,589	5,817,309	20,118,447
Related company payables	2,437,781	2,759,608	1,185,433
Accruals	2,447	1,352,531	5,101,323
Indirect taxes	-	1,932,478	6,074,375
Total trade and other payables	2,892,817	11,861,926	32,479,578

- 8.2.11 Similar to VGH Ltd, VGH Management Ltd registered an increasing negative working capital during the period 2015 to 2017. This was due to insufficient current assets available within VGH Management Ltd to cover the substantial current liabilities. The current ratio for VGH Management Ltd during this period was less than one, thereby indicating insufficient short-term assets to cover the company's short-term debt. Sufficient working capital is generally evidenced by a ratio of between 1.2 and 2 (Figure 38 refers).

Figure 38 | VGH Management Ltd working capital and current ratio, 2015-2017

	2015 (€)	2016 (€)	2017 (€)
Working capital calculation			
Current assets	68,170	3,564,042	7,169,300
Current liabilities	(2,892,817)	(11,861,926)	(33,375,741)
	(2,824,647)	(8,297,884)	(26,206,441)
Current ratio (current assets/current liabilities)	0.02	0.30	0.21

- 8.2.12 Of note to the NAO was that the independent auditor's report for 2016 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.
- 8.2.13 Noted in the directors' report for 2017 was that the directors had determined that the shareholder had given its undertaking to support VGH Management Ltd so that it would continue to operate in the foreseeable future. For this reason, the directors adopted the going concern basis in preparing the financial statements.
- 8.2.14 Similar to the previous year, the auditor did not modify his opinion of the financial statements for the year ending 31 December 2017. However, the auditor drew attention 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. However, 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.

8.3 Financial statements of Steward Malta Assets Ltd, formerly Vitals Global Healthcare Assets Ltd

- 8.3.1 VGH Assets Ltd was registered as a limited liability company in Malta on 18 May 2015. The directors of VGH Assets Ltd at its constitution were Mark Edward Pawley and Ram Tumuluri. Similar to VGH Management Ltd, the main objective of VGH Assets Ltd, in accordance with its Memorandum and Articles of Association, was that of renting, developing, maintaining and

running all types of buildings, including but not limited to hospitals, medical centres and nursing homes.

8.3.2 On 14 November 2016, a new company secretary was appointed, with Ram Tumuluri replacing Jonathan Vella. On 16 February 2018, new directors were appointed to manage VGH Assets Ltd, namely Armin Ernst and Michael Callum. On this day, a new Memorandum and Articles of Association was registered, which included a change in the registered address of VGH Assets Ltd and a change in the main objective of the company. The main objective of VGH Assets Ltd, as established in the revised Memorandum and Articles of Association, was that of acquiring and holding, buying and or selling and otherwise dealing in shares, membership interests, stocks, bonds, debentures or securities of or in any company or body of persons. As was the case with VGH Ltd, the company name of VGH Assets Ltd was changed to Steward Malta Assets Ltd during a shareholder’s general meeting held on 10 April 2018, following an extraordinary shareholders’ resolution. The registered address of the company was revised again.

8.3.3 The NAO reviewed the audited financial statements of VGH Assets Ltd for 2015 to 2017. VGH Assets Ltd registered yearly losses, with the company accumulating losses of €1,350,972 up to year end 2017. The main revenue earned during the years under review was that from the service concession. This was recognised in line with IFRIC 12 as revenue from the contract asset in relation to the delivery of the healthcare services project. Noted in the financial statements was that, during the construction phase, a financial receivable is recognised in the balance sheet and revenue is recognised in the income statement. The stage of completion of works is determined as the percentage of cost incurred until the end of the reporting period relative to the total estimated cost. For 2016, income of €4,255,358 from the construction activity was recognised, and cumulatively a financial receivable of €5,018,870 was recognised as a contract asset. During 2017, the revenue of VGH Assets Ltd also included earned rental income of €525,000. Regarding expenditure, the company’s main expense throughout the three years was its finance costs, with expenditure of €575,930 registered in 2017. Also of note was the ground rent expense incurred by VGH Assets Ltd, included as part of the administrative expenses, which amounted to €408,493 and €525,000 in 2016 and 2017, respectively (Figure 39 refers).

Figure 39 | VGH Assets Ltd income statement, 2015-2017

	2015 (€)	2016 (€)	2017 (€)
Revenue from service concession	669,612	4,255,358	7,147,693
Costs related to service concession	(656,482)	(4,159,047)	(6,398,414)
Gross Profit	13,130	96,311	749,279
Finance Income	10,000	83,900	173,200
Administrative Expenses	(3,245)	(452,522)	(897,835)
Finance Costs	(66,030)	(481,230)	(575,930)
Profit/loss	(46,145)	(753,541)	(551,286)

8.3.4 The major component of the total assets of VGH Assets Ltd was a contract asset. In 2017, this amounted to €11,814,763 (Figure 40 refers). Noted in the financial statements was that this was a way to recognise the construction, development and maintenance of the healthcare services project during its construction phase. The amount recognised was to be equal to the total costs incurred on the project, profit on completed construction and financing revenue.

Figure 40 | VGH Assets Ltd assets, 2015-2017

	2015 (€)	2016 (€)	2017 (€)
Non-current assets			
Property, plant and equipment	-	100,754	1,228,326
Contract asset	679,612	5,018,870	11,814,763
	679,612	5,119,624	13,043,089
Current assets			
Trade and other receivables	-	55,750	241,816
Cash and cash equivalents	170	140	110
	170	55,890	241,926
Total Assets	679,782	5,175,514	13,285,015

8.3.5 Cited in Figure 40 were amounts corresponding to property, plant and equipment. These consisted of plant and equipment, furniture, fixtures and fittings, office and computer equipment and improvements to premises, as illustrated in Figure 41.

Figure 41 | VGH Assets Ltd property, plant and equipment, 2015-2017

	2015 (€)	2016 (€)	2017 (€)
Plant and equipment	-	56,370	766,022
Furniture, fixtures and fittings	-	2,602	32,323
Office and computer equipment	-	22,039	276,023
Improvements to premises	-	19,743	153,958
Total property, plant and equipment	-	100,754	1,228,326

8.3.6 On the other hand, with respect to the equity and liabilities of VGH Assets Ltd, the major component was trade and other payables. In 2015, related company balances amounted to €502,966 of the payables for that year. Noted in the financial statements was that these payables mainly arose from the financing of expenses and were unsecured, interest-free and had no fixed date of repayment. In 2016 and 2017, the major component of trade and other payables was trade payables, with amounts standing at €4,601,932 and €8,510,554, respectively (Figure 42 refers).

Figure 42 | VGH Assets Ltd equity and liabilities, 2015-2017

	2015 (€)	2016 (€)	2017 (€)
<i>Capital and reserves</i>			
Called up Issued share capital	1,200	1,200	1,200
Accumulated losses	(46,145)	(799,686)	(1,350,972)
	(44,945)	(798,486)	(1,349,772)
<i>Liabilities</i>			
Current Liabilities			
Trade and other payables	724,727	5,974,000	14,634,787
	724,727	5,974,000	14,634,787
Total equity and liabilities	679,782	5,175,514	13,285,015

8.3.7 Similar to the other companies reviewed, VGH Assets Ltd had a consistent negative working capital in the years 2015 to 2017. The current ratio of VGH Assets Ltd was significantly less than 1, thereby serving as an indicator of insufficient current assets to cover the company's short-term debt (Figure 43 refers).

Figure 43 | VGH Assets Ltd working capital and current ratio, 2015-2017

	2015	2016	2017
Working Capital Calculation			
Current Assets (€)	170	55,890	241,926
Current Liabilities (€)	(724,727)	(5,974,000)	(14,634,787)
	(724,557)	(5,918,110)	(14,392,861)
Current Ratio (Current Assets/ Current Liabilities)	0.00	0.01	0.02

8.3.8 With respect to the years reviewed by the NAO, the independent auditor engaged by VGH Assets Ltd provided an unmodified audit opinion and noted that the financial statements gave a true and fair view of the balance sheet of the company and of its financial performance and confirmed that the financial statements were prepared in accordance with the requirements of the Companies Act, 1995.

8.3.9 For the years 2016 and 2017, the directors of VGH Assets Ltd benefitted from an exemption in relation to qualifying as a small company in terms of Article 185(1) of the Companies Act on grounds that the company did not exceed the limits of at least two of the three criteria, in respect of the current accounting period and the previous accounting year. The criteria for qualification as a small company are a balance sheet total of not more than €4,000,000, a turnover of not more than €8,000,000 and the average number of employees during the accounting period not exceeding 50. In this case, VGH Assets Ltd did not exceed the second and third criteria. In terms of this qualification, VGH Assets Ltd did not submit a directors' report to the ROC.

8.4 Consolidated financial statements of Steward Malta Ltd, formerly Vitals Global Healthcare Ltd

8.4.1 The key financial highlights of the VGH group of companies, as extracted from the consolidated financial statements submitted by Steward Malta Ltd, are presented in Figure 44.

Figure 44 | VGH Ltd consolidated financial statements, 2016-2017

	2016 (€)	2017 (€)
Revenue	38,830,800	75,967,464
Gross profit	4,704,882	9,748,467
Loss for the financial year	(6,066,750)	(18,441,226)
Total non-current assets	5,287,889	13,239,311
Total current assets	3,294,606	3,674,846
Total liabilities	17,523,312	44,296,200
Accumulated Losses	(8,942,017)	(27,383,243)
Cash and cash equivalents	1,153,871	159,782

8.4.2 The consolidated financial statements for VGH Ltd for 2016 had an unmodified audit opinion, indicating that the financial statements provided a true and fair view of the balance sheet of the company and the group and of its financial performance and cash flows. However, in the independent auditor's report, the auditor drew attention to a material uncertainty related to going concern. In the preceding sections of this chapter, the NAO noted that VGH Ltd, VGH Management Ltd and VGH Assets Ltd had a negative working capital for the year. 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. However, the auditor's opinion was not modified in this respect.

8.4.3 Concerns relating to the VGH group's ability to continue as a going concern were also expressed by the MFH representatives in a meeting with the NAO. 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. Elaborating in this regard, the MFH contended that one of the side letters to the Transaction Agreements was entered into by the Government and the VGH with the intention to render the contract more implementable and commercially viable, thereby supporting the VGH in its efforts to obtain financing. 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.

8.4.4 The Maltese Companies Act, 1995, states that the directors are required to prepare financial statements that give a true and fair view of the state of affairs of the company and the group at each reporting year end. In preparing these financial statements, one of the responsibilities

of the directors is to ensure that the financial statements are prepared on a going concern basis, unless it is inappropriate to presume that the company and the group will continue in business as a going concern. In fact, the director's report in the VGH's consolidated financial statements for 2017 included a relevant note wherein it was stated that, at the time of approving the financial statements, the directors determined that the shareholders had given their undertaking to support the VGH group so that it would continue to operate in the foreseeable future. For this reason, the directors adopted the going concern basis in preparing the financial statements.

8.4.5 Likewise, the independent auditor's opinion for 2017 was not modified. However, of note to the NAO was the emphasis of matter section in the independent auditor's report for the year. Without qualifying the audit opinion, the auditor drew attention to the 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. This was the second consecutive year wherein the auditor expressed concerns on the VGH's ability to continue as a going concern.

8.4.6 Concerns regarding the regularity of use of funds provided by the Government were highlighted by the Advisor MFH in a meeting held with the NAO. The Advisor MFH alleged that funds provided by the Government to the VGH were being channelled outside of the company, since despite the concession fee paid by Government being sufficient to cover existing operations, the VGH had accumulated significant creditors. Other indications of the financial misuse of public funds paid to the VGH were highlighted by the MFH representatives when noting that the financial information being requested from the VGH was not being submitted, that it had failed to obtain financing, and that it was late in submitting the obligatory financial statements.

Chapter 9 | A review of the Concessionaire's financial statements

9.1 Timeline

9.1.1 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 45 refers).

Figure 45 | 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	An MoU was signed between the Government and the 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 Fearné 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 MEIB, the 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 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 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 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 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 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 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 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 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 HCC, HMC and 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 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 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 NSO's analysis of the statistical treatment of the project is compiled, classifying it as on the Government balance sheet. 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 MCAST 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 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.

9.2 On the negotiation and authorisation of the contractual framework

- 9.2.1 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.
- 9.2.2 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

- 9.2.3 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 PS MEH-Energy, the PS MEH-Health, 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 COO of BEAT Ltd.

- 9.2.4 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 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.
- 9.2.5 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.
- 9.2.6 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 MDH, the CEO GGH and the CEO KGRH.
- 9.2.7 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.
- 9.2.8 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 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.
- 9.2.9 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.

- 9.2.10 Notwithstanding the significant materiality of the project and its undoubted impact on public finances, the NAO noted that 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

- 9.2.11 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.
- 9.2.12 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.
- 9.2.13 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.

9.2.14 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.

9.2.15 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.

9.2.16 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.

9.2.17 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.

9.2.18 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.

- 9.2.19 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 verification of that asserted, while the inconsistencies noted in testimonies provided to this Office remained a concern.
- 9.2.20 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 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.
- 9.2.21 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.
- 9.2.22 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.

9.2.23 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

9.2.24 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.

9.2.25 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.

9.2.26 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.

- 9.2.27 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.
- 9.2.28 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.
- 9.2.29 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.
- 9.2.30 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.
- 9.2.31 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.

9.2.32 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.

9.2.33 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.

9.3 An analytical review of the contractual framework

Services Concession Agreement

9.3.1 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.

9.3.2 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.

- 9.3.3 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.
- 9.3.4 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.
- 9.3.5 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

- 9.3.6 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.
- 9.3.7 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.

- 9.3.8 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

- 9.3.9 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.
- 9.3.10 As regards the constitution of the 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

- 9.3.11 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.
- 9.3.12 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.
- 9.3.13 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.
- 9.3.14 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.
- 9.3.15 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 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.
- 9.3.16 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.
- 9.3.17 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 FGI 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.

- 9.3.18** 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 SCH had agreed on certain aspects of the project while other elements remained pending.
- 9.3.19** 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.
- 9.3.20** 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.
- 9.3.21** 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.
- 9.3.22** 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.

- 9.3.23 Apart from the presentation made to the Committees on 17 January 2017 regarding the FGI 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.
- 9.3.24 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

- 9.3.25 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).
- 9.3.26 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.

- 9.3.27 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.
- 9.3.28 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.
- 9.3.29 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.

- 9.3.30 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.
- 9.3.31 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

- 9.3.32 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.
- 9.3.33 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.

- 9.3.34 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

- 9.3.35 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.
- 9.3.36 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.
- 9.3.37 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

- 9.3.38 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.
- 9.3.39 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

- 9.3.40 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.

- 9.3.41 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.
- 9.3.42 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

- 9.3.43 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.
- 9.3.44 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, December 2021, this had not yet been realised.

- 9.3.45 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.
- 9.3.46 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.
- 9.3.47 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; MRIs; all services offered at the KGRH; and a state-of-the-art rehabilitation centre at the SLH serving inpatients and outpatients.
- 9.3.48 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.
- 9.3.49 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.
- 9.3.50 In sum, the minimum service delivery fee payable by Government as regulated by the HSDA stood at an annual €72,856,500.
- 9.3.51 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.

9.3.52 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

9.3.53 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.

9.3.54 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.

9.3.55 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.

9.3.56 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

9.3.57 Key in the overall monitoring of the performance of the VGH in terms of service levels and 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.

9.3.58 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.

9.3.59 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.

9.3.60 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

- 9.3.61 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 IT and hospital management system, and patient care and client satisfaction.
- 9.3.62 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.
- 9.3.63 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.
- 9.3.64 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.
- 9.3.65 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 ICU and in anaesthesia at the GGH, as well as with respect to rehabilitation care services provided at the KGRH.

- 9.3.66 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

- 9.3.67 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.
- 9.3.68 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.

- 9.3.69 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.
- 9.3.70 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 an MRI 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.
- 9.3.71 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.
- 9.3.72 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.

- 9.3.73 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 NGO 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

- 9.3.74 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 OPU set up was also raised as a point of note by the Ministry.
- 9.3.75 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.

- 9.3.76 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

- 9.3.77 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.

- 9.3.78 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.

- 9.3.79 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.

- 9.3.80 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 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.

9.3.81 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.

9.3.82 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 reflection of its grave ineptitude in governance, for the concessionaire was immediately and evidently not fit for purpose.

Verification of payments made

9.3.83 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 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.

9.3.84 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.

9.3.85 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.

9.3.86 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.

9.3.87 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.

9.3.88 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.

9.3.89 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.

9.3.90 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.

9.3.91 A case in point was the failure of the HSDA to appropriately regulate the incurrance 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

- 9.3.92** 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.
- 9.3.93** 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.

- 9.3.94 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.
- 9.3.95 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.
- 9.3.96 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.
- 9.3.97 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

- 9.3.98 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.

- 9.3.99 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.
- 9.3.100 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.
- 9.3.101 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.
- 9.3.102 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.
- 9.3.103 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.
- 9.3.104 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.

- 9.3.105 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.
- 9.3.106 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.
- 9.3.107 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

- 9.3.108 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.
- 9.3.109 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.
- 9.3.110 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.

9.3.111 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.

9.3.112 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.

9.3.113 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.

9.3.114 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.

- 9.3.115 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

- 9.3.116 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.
- 9.3.117 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

9.3.118 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.

9.3.119 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.

9.3.120 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.

9.3.121 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 IT system would cater for the collection of information relevant to this process.

9.3.122 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 ICC 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.

- 9.3.123 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.
- 9.3.124 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.
- 9.3.125 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 CFO VGH and such information could therefore not be provided.
- 9.3.126 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.

9.3.127 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.

9.3.128 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. Furthermore, the payment allowed the Government to limit the legal interest due.

9.3.129 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

9.3.130 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.

- 9.3.131 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.
- 9.3.132 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.
- 9.3.133 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.
- 9.3.134 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.

9.3.135 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.

9.3.136 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.

9.3.137 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.

9.3.138 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.

9.3.139 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

9.3.140 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 PAYE 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.

9.3.141 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

9.3.142 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.

9.3.143 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.

9.3.144 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

9.3.145 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.

9.3.146 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

9.3.147 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

9.3.148 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

- 9.3.149 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.
- 9.3.150 Another aspect of regulatory compliance considered by the NAO related to conformity with state aid regulations. The 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

- 9.3.151 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.
- 9.3.152 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.
- 9.3.153 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

9.3.154 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.

9.3.155 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.

9.4 Comparison of the contractual framework with the Request for Proposals

9.4.1 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

9.4.2 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.

- 9.4.3 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.
- 9.4.4 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.
- 9.4.5 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.
- 9.4.6 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.
- 9.4.7 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

- 9.4.8 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.
- 9.4.9 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.
- 9.4.10 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 VGH at the end of 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.
- 9.4.11 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.

9.4.12 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.

9.4.13 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.

9.4.14 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.

- 9.4.15 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.
- 9.4.16 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.
- 9.4.17 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.
- 9.4.18 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.
- 9.4.19 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.

9.4.20 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

9.4.21 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.

9.4.22 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.

- 9.4.23 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.
- 9.4.24 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.
- 9.4.25 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.
- 9.4.26 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.
- 9.4.27 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.

- 9.4.28** 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.
- 9.4.29** 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.
- 9.4.30** 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

- 9.4.31 The NAO also carried out a comparison of the LSA and its Addendum to the RfP. Notable deviations resulted, including those relating to the financial elements of the Agreement, future salaries, employment and working conditions, training and the number of staff.
- 9.4.32 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.
- 9.4.33 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.
- 9.4.34 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.

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

- 9.5.1 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.

- 9.5.2** 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.
- 9.5.3** 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.
- 9.5.4** 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.
- 9.5.5** 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.

- 9.5.6 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.
- 9.5.7 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.
- 9.5.8 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.
- 9.5.9 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 MANV 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.
- 9.5.10 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.

9.6 The classification of the project as on-balance sheet

- 9.6.1 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.
- 9.6.2 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.
- 9.6.3 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.

- 9.6.4 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.
- 9.6.5 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.
- 9.6.6 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.
- 9.6.7 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.

9.7 On the financial position of the Vitals Global Healthcare group

- 9.7.1 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 ROC 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.

- 9.7.2 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.
- 9.7.3 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.
- 9.7.4 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.
- 9.7.5 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.
- 9.7.6 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.

- 9.7.7 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.
- 9.7.8 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.
- 9.7.9 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.

9.7.10 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.

9.8 Overall conclusion

9.8.1 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.

9.8.2 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 infrastructure 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.

9.8.3 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.

- 9.8.4 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.
- 9.8.5 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.
- 9.8.6 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.
- 9.8.7 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.
- 9.8.8 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.

- 9.8.9 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.
- 9.8.10 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.
- 9.8.11 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.

Appendix A | Correspondence submitted by the Union Haddiema Magħqudin and the Medical Association of Malta to the Public Accounts Committee



SPITERI BAILEY ADVOCATES

21 ta' Novembru 2016

Onor. Sur Tonio Fenech
Chairman
Kumitat Parlamentari għall-Kontijiet Pubblici
Il-Parlament,
Valletta - Malta

Onor. Fenech,

F'isem il-**Union Haddiema Magħqudin - Voice of the Workers (UHM)** u l-**Medical Association of Malta (MAM)**, qed inressaq l-odjerna talba sabiex il-Kumitat Parlamentari għall-Kontijiet Pubblici, li tiegħu inti Chairperson, jinvestiga l-kuntratti hekk magħrufa tat-tlett spatarijiet mal-Vitals Global Healthcare Malta (VGH).

L-interess ewlieni taz-zewg trade unions huwa dak tal-membri tagħha, haddiema tal-Isptarijiet pubblici relattivi. Il-Gvern qed jesigi illi l-Unions tagħna jagħlqu l-ftehim – izda l-Unions qed ihossu illi mhux fl-interess tal-membri tagħhom illi jikkonkludu l-ftehim u dan fid-dawl ta' tant u tant mistoqsijiet, fatti neboluzi, nuqqas ta' risposti u nuqqas ta' trasparenza li jiccirkondaw il-ftehim milhuq bejn il-Gvern u l-Vitals Global Healthcare Malta.

Il-Unions esponenti jhossu illi mhux sewwa u ma jkunx fl-interess tal-membri tagħhom illi jagħlqu l-ftehim meta mhux car x'inhuma l-konsegwenzi legali, prattici, fattwali, industrijali u reali fuq il-haddiema, konsegwenza tal-ftehim iffirmit bejn il-Gvern u l-Vitals Global Healthcare Malta.

Il-Unions għamlu hafna mistoqsijiet li baqghu mhux mwiegħa. Il-Unions talbu għal hafna informazzjoni li baqghet ma nghatatx. Il-Unions esperjenzaw xhur twal ta' nuqqas ta' trasparenza, ta' nuqqas ta' serjeta' u ta' nuqqas ta' *level playing field*. Huwa għalhekk, illi qabel ma l-Unions jhossuhom komdi dwar l-effetti reali tal-kuntratt msemmi fuq il-haddiema u l-kundizzjonijiet tagħhom, huma mhux ser jersqu biex jiffirmaw. Huwa għalhekk ukoll, li l-Unions qed jagħmlu minn kollox kif ikollhom l-informazzjoni kollha, inkluz għalhekk billi ressuq t-talba odjerna.

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SPITERI BAILEY ADVOCATES

Fatti Rizultanti sal-llum

Reċentament, il-Gvern ħabbar li kien se jgħaddi tliet sptarjiet f'idejn operatur privat, anzi aktarx illi llum gja għaddha l-istess spartijiet.

Sal-ġurnata tal-lum ġew ippublikati siltiet mill-kuntratti filwaqt illi partijiet sħaħ ġew iċċensurati.

Kien hemm xi stqarrijiet (mhux verifikati u aċċertati) min-naħa tal-Gvern, li minnhom jirrizulta illi :

- Il-kumpanija *Vitals Global Healthcare Malta* hi kumpanija ġdida li twaqqfet reċentament u giet reġistrata hawn Malta wara li saret is-sejha għall-offerti;
- Din il-kumpanija hi proprjeta' ta' kumpanija *Bluestone 4*, registrata fil-British Virgin Islands (BVI). Jissemma vagament, mingħajr verifika, li din hi parzjalment proprjeta' ta' l-*Oxley Group* ta' Singapore, iżda ħadd ma jaf verament din ta' min hi;
- L-ebda waħda minn dawn il-kumpaniji mhi maghrufa illi għandha esperjenza fis-settur tas-saħħa, iżda nafu li *Vitals Global Healthcare* talbet u ħallset għall-konsulenza ma' żewġ kumpaniji Amerikani assoċjati ma' *Boston Medical* u *Virginia Medical*, li minn naha tagħhom, dawn dejjem stqarrew li m' għandhomx x'jaqsmu mal-kumpanija *Vitals*;
- Is-Sur Ram Tumuluri hu dikjarat bħala direttur tal-kumpanija *Vitals*. Minn tfittxija fuq dominji pubblici fl-internet jidher li hemm twissija dwaru mill-*Canadian Chamber of Commerce* peress li kien involut f'kumpanija li kienet tmexxi lukandi u li falliet;

Jidher li l-kumpanija *Vitals Global Healthcare* u *Bluestone* għandhom assi konsistenti biss fi ftit eluf ta' ewro;

Is-Sur Ram Tumuluri stqarr f'intervista fil-ġurnal *The Malta Independent* li *Oxley* kienet se toħroġ terz mill-investment mwieghed ta' €200 miljun, waqt li ż-żewġ terzi l-oħra kienu ser jinstabu minn kredituri finanzjarji oħrajn;



SPITERI BAILEY ADVOCATES

Minn tfittxija fuq dominji pubblici fl-internet, jidher li *Oxley* qatt ma ddikjarat li ser taghmel xi investiment f'dan il-progett, dan ma jidher imkien fil-*website* ufficjali taghha;

Fil-programm *Xtra* fuq PBS, il-Ministru Fearne qal li l-investiment ser issir issa minn *Oxley* u Bank of Australia”;

F'intervista li saret mill-prezentatur Sergio Mallia fuq Radju RTK xi granet ilu, il-Ministru Chris Fearne qal li l-finanzjament kien gej, in kwantu ghal terz minn *Oxley* u żewġ terzi mill-kumpanija *Allianz*. Minn riċerka li saret fuq dominji pubblici fl-internet, jirriżulta li l-kumpanija *Allianz* qatt ma ddikjarat dan l-investiment u ebda ufficjal jew parti mill-*management* ta' *Allianz* qatt ma għamel xi referenza għal dan ir-rigward;

Illi anzi, jirriżulta minn pubblikazzjonijiet ta' gurnalisti lokali (Daphne Caruana Galizia blog) illi minn *side letter* ippublikatat jidher li din talbet li tinhall mill-obbligazzjonijiet finanzjarji taghha – fatt dan li ma jidhirx illi gie negat.

Il-Ministru Fearne ukoll iddikjara fuq Radju RTK li t-tliet sptarijet għaddew f'idejn il-kumpanija *Vitals Global Healthcare Malta*:

- Għas-somma ta' €3 miljun u ċens annwali ta' nofs miljun ewro (€500,000) fis-sena għat-tliet siti f'daqqa.
- Il-Ministru Fearne qal ukoll li (a) il-Gvern kien se jhallas għas-servizz, (b) il-ħaddiema ma kienux se jonqsu, (c) li s-somma li kien se jhallas il-Gvern kienet se tkun daqs kemm qed tiswa lill-Gvern bħalissa u (d) li l-pagi kienu se jithallsu mill-Gvern u mbagħad jitnaqqsu mill-ħlas dovut;
- Intqal li mill-profitti ta' żvilupp fit-turiżmu mediku fi sptar privat, l-Isptar San Luqa, u f'Għawdex, l-operatur se jdaħħal biżżejjed flus biex ikun jista' jaghmel profitt wara li jaqta' l-ispejjeż kollha.



SPITERI BAILEY ADVOCATES

Bart's Medical School (Queen Mary University of London)

Il-Gvern iffirma ftehim separat u indipendenti ma' *Bart's Medical School* bl-intenzjoni li din tħaddem kors ta' ħames snin, bl-ewwel sentejn isir f'binu f'Għawdex u mbagħad jissokta fl-Isptar Mater Dei għal tlett snin.

Jidher ukoll li l-Gvern Malti ntrabat li jimpjega miegħu l-gradwati kollha ta' din l-Universita' għal perijodu ta' sentejn. Jidher li l-bini ta' Għawdex għandu jinbena minn *Vitals Global Healthcare* bħala parti mill-kuntratt. Il-gradwati Maltin tal-Medical School ta' l-Universita ta' Malta m'għandhomx din il-garanzija.

Wara ftehim mal-Medical Association of Malta ġie dikjarat minn Bart's li huma kienu se jħallsu lit-tobba Maltin skont il-flehim kollettiv prezenti ma' l-Universita'.

Bart's dejjem iddikjara li ma għandhom xejn x'jaqsmu ma' *Vitals*, ħlief li kien se jkollhom membru wiehed minn tnax fit-tmexxija tal-isptar.

Il-*business model* ta' *Bart's* jidher possibbli peress li l-Gvern ħa r-riskju kollu fuqu. Malta għandha reputazzjoni tajba, u d-domanda internazzjonali għal dan it-tagħlim hi qawwija.

Il-liċenzjar u l-applikazzjoni għall-permessi

Wiehed ma jistax jifhem kif *Vitals Global Healthcare*, li għandha biss żewġ impjegati, (jiġifieri l-Kap Eżekuttiv, is-Sur Armin Ernsts u l-Assistent Personali tiegħu, u mingħajr Dipartiment tar-Riżorsi Umani, u mingħajr Dipartiment tal-*Procurement*) tista' tmexxi uffiċċju wiehed aħseb u ara tliet sptarijiet shaħ. Jidher li l-kumpanija *Vitals Global Healthcare* m'għandhiex flus, jew nies, jew esperjenza biex tagħmel dan.

Wiehed, għalhekk, ma jiskantax li l-kumpanija wkoll insiet tapplika għal-liċenzji neċessarji biex wiehed imexxi dawn l-isptarijiet u di fatti, in segwitu għal Protest Giudizzjajru li tressaq xi gimghat ilu miz-żewġ Unions esponenti, kien irrizulta illi l-liċenzji kien għad ma għandhomx.

Filwaqt li l-Gvern, meta l-Onor. Konrad Mizzi kien uffiċjalment il-Ministru responsabbli għas-Saħha, kien ħareġ bl-ideja li tista' tibni sptar mingħajr applikazzjoni ta' ippjanar, dan kollu kellu jiġi rtirat taħt pressjoni Ewropeja skond id-direttivi ta' l-UE u l-Liġijiet ta' Malta.



SPITERI BAILEY ADVOCATES

Ftehim mal-Unions

Illi fis-settur tas-Sahha Pubblika, huma erbgha l-Unions li jirraprezentaw id-diversi setturi ta' haddiema. B'zieda mal-Unions esponenti, jizdiu l-GWU u l-MUMN.

Gie mhabbar illi l-MUMN u l-GWU iffiraw il-ftehim tagħhom. Jinghad illi gie assikurat illi l-membri tagħhom jibqgħu haddiema tal-Gvern ta' Malta anke jekk ser jaqgħu taħt l-hekk imsejjah *management* ġdid. Dan minkejja illi mill-partijiet tal-kuntratt pubblikati – din ma tirrizultax.

Min-naħa tagħhom, il-UHM *Voice of the Workers* u l-*Medical Association of Malta* (MAM), il-unions esponenti, minħabba dubbi serji, qed jinsistu li qabel ma jieħdu dan il-pass u jorbtu lill-membri tagħhom bi ftehim, għandhom l-ewwel jiġu pubblikati l-kuntratti **kollha**, isir *due diligence exercise* mill-Awditur Ġenerali fuq il-kwistjonijiet u d-dubbi kollha u issa issir l-investigazzjoni mill-*Public Accounts Committee* tal-Parlament Malti. Huwa b'hekk illi kwalsiasi dubbji forsi jiġu kkjarifikati.

"Forsi", peress illi jibqgħu dubbji zgur dwar tant avvenimenti oħra illi mhux b'kombinazzjoni jiccircondaw ukoll din il-kwistjoni tal-kuntratti tal-ispartijiet mal-Vitals, mhux l-anqas, il-kwisjtoni tal-*Panama Papers*.

Dan il-ftehim bejn il-Gvern ta' Malta u *Vitals Global Healthcare* gie negozjat minn żewġ persuni msemmija fil-*Panama Papers* li fl-istess zmien ta' dawn in-negozjati, fetħu kumpaniji sigrieti, u kkuntattjaw mhux inqas minn disa' banek biex fihom ikunu jistgħu jifgħu s-senseriji u kommissjonijiet, li kienu jammontaw għal mijiet ta' eluf ta' ewro fis-sena.

Sitwazzjonijiet li certament huma inkwetanti imma ukoll iqajjmu hafna u hafna dubbji.

Fost l-izjed affarijiet inkwetanti għall-haddiema u għall-unions

Kif wiehed jista' japprezza minn numru ta' premissi hawn fuq magħmula, il-Unions esponenti għandhom numru ta' *issues* illi qed jinkwetawhom u li qabel ma jserrhu rashom dwarhom, mhux qed ihossuhom komdi jersqu biex jiffiraw ftehim mal-Gvern. Fost dawn :



SPITERI BAILEY ADVOCATES

1. *Vitals Global Healthcare Malta*, verament ta' min hi? Finalment, il-Unions u l-membri taghhom, ma min ser ikunu qed ihabbtu wicchom?
2. Min jiftah *BVI Company* jagħmilha biex jaħbi xi haġa, jew biex jevadi t-taxxi, jew biex jaħbi minn fejn ġejjin il-flus - allura fejn sejjer il-qligħ li jista' jsir mill-operat tat-tlett sptarijiet f'Malta? Kif jista' jkun illi mistoqsijiet bhal dawn ma jinkwetawx lill-haddiema u r-rapprezentanti taghhom?
3. Il-ħabi jsir, jew għax ikun hemm possibbiltà ta' qligħ illegali, fl-aġħar każ minn kriminalità u organizzata, jew inkella politiċi korrotti, jew indhil ta' gverniet jew servizzi sigrieti ta' ċertu pajjiżi b'interess li jikkontrollaw servizz essenzjali. Il-Unions esponenti iħossu illi dawn id-dubbi kollha għandhom jigu eliminati.
4. Minn fejn ġejjin il-flus għal dan l-investment? L-istabilità tal-operatur hija mportanti għall-Unions sabiex jassikuraw l-impjiegi u l-kundizzjonijiet tax-xogħol tal-membri taghhom.
5. X'inhil r-raġuni għaliex qed tinheba l-identità tal-proprjetarji wara dan il-progett?
6. Il-Unions jidhrilhom illi l-*business model* kif dikjarat *prima facie* juri riskju kbir. Kif jista' wieħed iġib lura l-investment mingħajr ma l-Gvern joħroġ ewro iżjed? Il-Unions jidhrilhom illi jew inghatat informazzjoni hażina, jew inkella mhux investment serju.
7. X'inhil l-pozizzjoni tal-Gvern fir-rigward tal-*indemnity clause* illi l-membri tal-MAM igawdu minnha llum fl-isfond tal-ftehim mal-*Vitals Global Healthcare Malta*?
8. Il-haddiema u l-Unions esponenti jixtiequ illi jkun dejjem assikurati illi huma joffru l-aqwa servizz tas-saħħa għall-poplu Malti. B'dawn id-dubbi kollha, kif jistgħu jserhu rashom il-Unions esponenti illi l-membri taghhom ser ikunu qed jahdmu f'ambjent tajjeb biex joffri servizz mediku tajjeb, adegwat u ta' livell għall-poplu Malti u Ghawdxi?
9. Kif ser ikun assikurat illi l-haddiema membri tal-Unions esponenti ser ikollhom l-għoddha, l-materjal u l-*equipment* kollu necessarju sabiex jadmu, u illi tali makkinarju ikun mantnut b'mod adegwat?



SPITERI BAILEY ADVOCATES

10. X' garanziji hemm li l-pazjenti Maltin u Ghawdxin ser jinghataw l-ahjar kura medika u bla dewmien u li dan ma jigix pregudikat minhabba prioritá għall-pazjenti barranin (*medical tourists*)?

Is-sens ta' responsabbilitá tal-Unions jiddetta illi ma jagħlqux ftehim sakemm ma jkunux jafu l-parametri kollha importanti u necessarji f'liema il-membri tagħhom ser ikunu qed jahdmu u joperaw fis-snin li gejjin. Huwa insult illi l-Gvern jippretendi illi l-Unions jintrabtu għal numru ta' snin meta l-fatti kollha għadhom mhux magħrufa. Aktar u aktar meta hemm tant habi, dubbji u misteri wara l-ftehim tal-Gvern mal-*Vitals Global Healthcare Malta*.

Konkluzjoni

Għaldaqstant il-*UHM Voice of the Workers* u l-*MAM* qed jitolbu lill-Kumitat Parlamentari għall-Kontijiet Pubbliċi sabiex jinvestiga dawn il-kuntratti bl-aktar mod dettaljat fil-kuntest tal-premessi hawn fuq magħmula u l-preokkupazzjonijiet hawn fuq espressi, mhux lanqas, illi:

Ma jagħmilx sens li l-Gvern qed jgħaddi t-tmexxija ta' tliet sptarijiet ewlenin f'idejn kumpanija anonima li timpjega biss żewġ persuni, mingħajr ftehim mal-*Unions* dwar il-ħaddiema li l-kumpanija m'għandha ebda esperjenza fis-settur;

Li minkejja dan, s'issa saret applikazzjoni mal-Awtorita tal-Ippjanar biss biex tiġi rrangata l-faċċata ta' l-Isptar San Luqa u bini ta' uffiċċji u *lecture rooms* f'Għawdex. Dan kollu juri li m'hemm l-ebda intenzjoni serja sabiex isiru sptarijiet ġodda.

Illi fl-opinjoni ta' l-awturi, dan mhux qed isir fl-aħjar interess tal-poplu Malti u s-servizz mediku li jixraq, iżda biex kumpanija li m'għandhiex assi u li mhix magħrufa, tkun tista' tuża l-bini li ngħatalha għal tletin sena, fl-isfond ta' dubbji dwar il-materji finanzjarji u kummerċjali tal-kuntratt.

Il-Unions esponenti għandhom ukoll dubbji serji dwar fl-użu tal-fondi pubbliċi u l-assi pubbliċi, partikolarment, jekk ġewx segwiti il-ligijiet ta' *public procurement*, jekk il-evalwazzjonijiet tal-binjiet tat-tlett siti ta' sptarijiet sarux bi proċedura korretta mid-Dipartiment tal-Artijiet, u jekk din il-evalwazzjoni sarix minn periti indipendenti, u jekk il-prezzijiet ikkwotati kinux jirreflettu r-realtajiet tas-suq.

SB

SPITERI BAILEY ADVOCATES

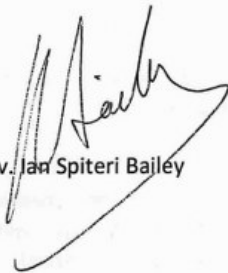
Jekk jirrizulta illi l-proprjetajiet ghaddew bi prezz baxx, kif aktarx hu l-kaz, u jekk dan sar bl-iskop illi l-proprjetajiet jintuzaw ghal garanzija bankarja necessarja, allura jekk hux kaz dan ta' *state aid* bi ksur tar-regolamenti u ligijiet Ewropej?

F'Għawdex, b'mod partikulari, dan l-operatur ngħata monopolju li jista' jirrizulta li fil-futur dan jista' jintuza kontra il-pazjenti Għawdxin, jekk dan hux permess taħt il-ligijiet tal-kompetizzjoni, u jekk ingħatax eżenzjoni minn dan, u jew dan sarx kif tirrikjedi il-ligi.

Għal dan kollu, Onorevoli Chairperson tal-Kumitat Parlamentari għal Kontijiet Pubblici, il-Unions esponenti qed titlob lill-Kumitat minnek mmexxi sabiex jinvestiga fid-dettal il-kuntratt magħmul bejn il-Gvern u l-*Vitals Global Healthcare Malta* u/jew kwalsiasi entita' ohra, peress illi qabel ma jkun hemm il-konkluzjonijiet ta' din l-investigazzjoni u dik tal-Awditur Generali, il-Unions esponenti mhux disposti illi jiffirmaw ebda ftehim.

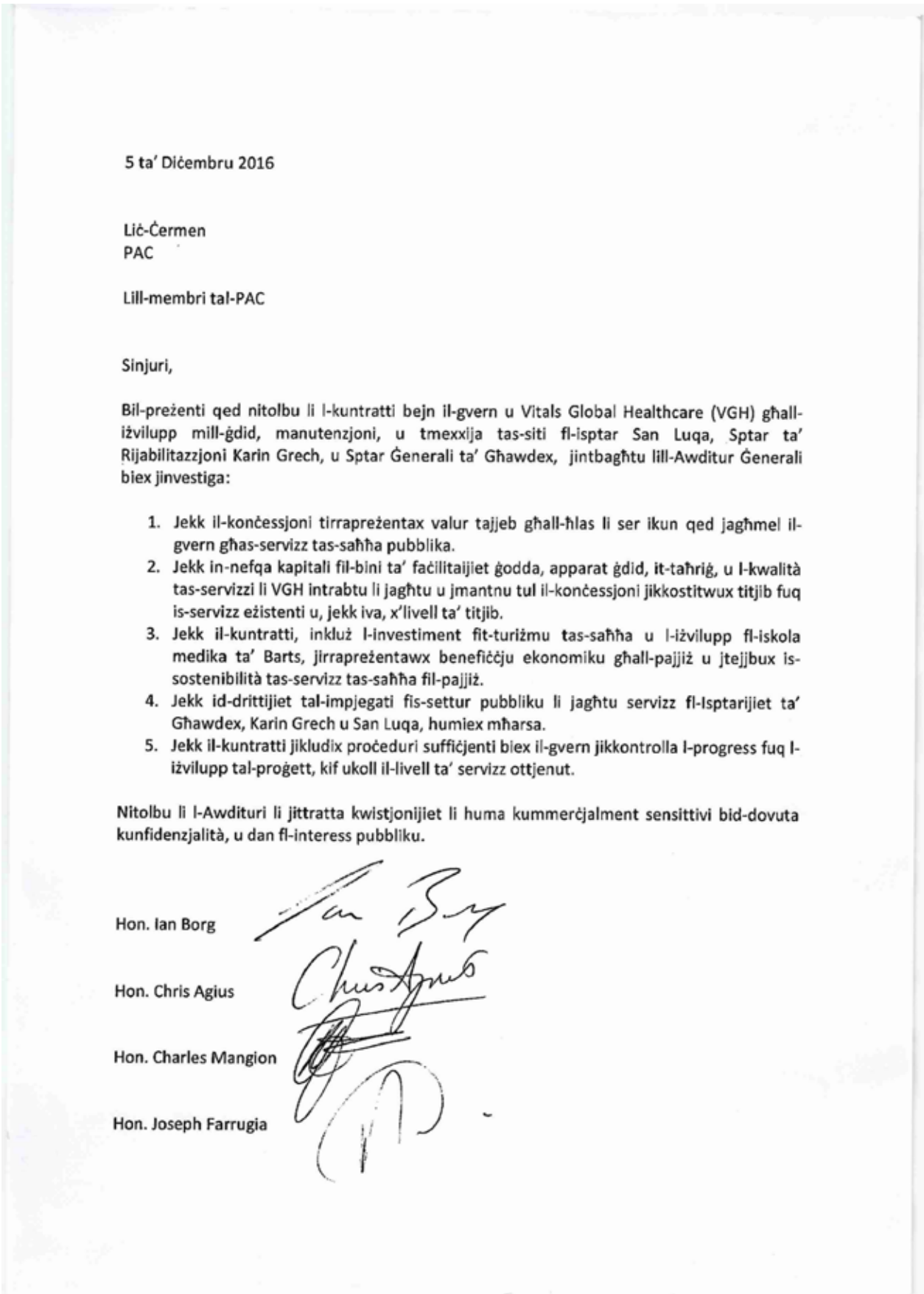
Il-Unions esponenti qed iweghdu l-kooperazzjoni shiha tagħhom, anke jekk necessarju, billi jixhdu quddiem il-Kumitat.

Nirringrazzjak u Nselli Ghalik,



Avv. Ian Spiteri Bailey

Appendix B | Correspondence submitted by the Government members on the Public Accounts Committee to the Chair Public Accounts Committee



Appendix C | Correspondence submitted by the Opposition members on the Public Accounts Committee to the Auditor General

KAMRA TAD-DEPUTATI



HOUSE OF REPRESENTATIVES

8 ta' Jannar 2018

Is-Sur Charles Deguara
Awditur Ġenerali
Uffiċċju Nazzjonali tal-Verifika
Floriana

Sur Deguara,

TRASFERIMENT IRREGOLARI TAT-TMEXXIJA TA' SPATARIJET PUBBLIĊI

Nirreferi ghat-talba li saret lill-Uffiċċju tieghek dwar investigazzjoni marbuta mal-kuntratti ta' privatizzazzjoni ta' tliet spatarijiet pubbliċi mal-Vitals Global Healthcare Malta.

Huwa evidenti li s-settur tas-saħħa ta' pajjiżna qiegħed jiffaċċja imminar ta' governanza fejn issa min suppost intgħażel mill-Gvern biex imexxi dawn it-tliet spatarijiet pubbliċi għal 30 sena, għażel li jittrasferi l-konċessjoni lil terzi f'anqas minn 30 xahar. Dak li tħabbar fil-media u f'it wara kkonfermat mill-Gvern huwa materja li titlob verifika bir-reqqa min-naħa tal-Uffiċċju tieghek, mhux lanqas minhabba l-mod xejn trasparenti li bih qiegħed jitmexxa dan il-proċess.

Għall-Oppożizzjoni huwa inkwetanti hafna li s-servizzi tas-saħħa pubblika ta' dan il-pajjiż spiċċaw suġġett ta' negozjar moħbi li jibdel l-idejn qisu xi munita f'xi suq. Minbarra tħassib serju proċedurali, l-Oppożizzjoni tqis dan l-għaġir bħala imminar tal-governanza ta' pajjiżna fejn is-servizz pubbliku tas-saħħa tagħna jiġi negozzjat bejn terzi persuni qisu xi komodità fuq xi suq. L-ebda stat li għandu anke l-iċken dinjità ma' jista' qatt jaċċetta sitwazzjonijiet bħal dawn.

Dan irid jiġi nkwadrat ukoll fid-dawl li f'Diċembru li għadda l-Parlament intalab japprova (kif fil-fatt għamel biss bis-saħħa numerika tal-Gvern) **żieda fl-allokazzjoni għall-ħlasijiet lill-Vitals taħt din il-konċessjoni ta' xejn anqas minn €17,840,000 (sbatax-il miljun tmien mija u erbghin elf Ewro) li tirrappreżenta żieda ta' 108% tal-allokazzjoni oriġinali approvata fil-Budget għas-sena 2017.**

Dan kollu huwa inkwetanti hafna aktar meta wieħed iqis li mhux biss it-termini kuntrattwali tal-ftehim oriġinali jibqgħu mistura (minhabba li l-Gvern għażel li jippubblika dokumenti bit-termini rilevanti kollha ingassati bi-iswed) iżda issa anke t-termini ta' dan it-trasferiment prospettiv lanqas biss huma ppubblikati f'affront totali għat-trasparenza u l-governanza tajba. L-uniku ċerterza li teżisti hija dik li l-poplu ser jibqa' jħallas ammonti eżorbitanti sena wara l-oħra, b'din is-sena l-ammont smat **jaqbeż il-€41,000,000.**

Kif m'għandi l-ebda dubbju li tapprezza d-deċiżjonijiet li qed jittiehdu qed jaffetwaw l-aktar aspett sensitiv tas-servizzi pubbliċi f'pajjiżna, cioè' dawk tas-saħħa u għaldaqstant nappellalek biex tinvestiga dan it-traferiment prospettiv b'urgenza sabiex ma jiġix kompromess il-gejjieni ta' dan il-qasam b'mod irreversibbli.

Insellu għalik,

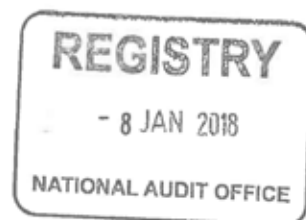
Onor. Beppe Fenech Adami

Onor. Krysty Debono

Onor. Claudio Grech

Membri ta' l-Oppożizzjoni fuq il-Kumitat għall-Kontijiet Pubbliċi

CC: Speaker tal-Kamra tad-Deputati, Kumitat tal-Kontijiet Pubbliċi



Appendix D | Correspondence submitted by the Auditor General to the Public Accounts Committee



National Audit Office
Notre Dame Ravelin
Floriana FRN 1600
Malta

Phone: (+356) 22055555
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Website: www.nao.gov.mt
www.facebook.com/NAOMalta

Awditur Generali

Rif: NAO 39/2016

16 ta' Jannar 2018

Onor. Beppe Fenech Adami LL.D., M.P.
Chairman
Kumitat tal-Kontijiet Pubbliċi
Parlament ta' Malta
Pjazza Helsien
VALLETTA

Għażiż Onor. Fenech Adami,

Nagħmel referenza għat-talbiet mibghuta lill-Kumitat tal-Kontijiet Pubbliċi mill-Union Haddiema Magħqudin – Voice of the Workers u l-Medical Association of Malta fil-21 ta' Novembru 2016, u mill-Membri tal-Gvern fl-istess Kumitat fil-5 ta' Diċembru 2016, dwar il-konċessjoni ta' tliet sptarjiet mogħtija mill-Gvern lil Vitals Global Healthcare. Nagħmel referenza wkoll għall-ittra mibghuta lill-Uffiċċju Nazzjonali tal-Verifika mill-Membri tal-Oppożizzjoni fil-Kumitat imsemmi fit-8 ta' Jannar 2018 dwar din il-konċessjoni. F'dawn l-ittri l-Uffiċċju ntablab jinvestiga aspetti dwar il-konċessjoni msemmija.

F'dan l-isfond, l-Uffiċċju Nazzjonali tal-Verifika fassal dawn it-termini ta' referenza:

1. Skrutinju tal-metodu adottat fl-ghoti tal-konċessjoni lil Vitals Global Healthcare;
2. Analizi tal-evalwazzjoni tas-sottomissjonijiet li wasslet għall-ghotja tal-konċessjoni;
3. Verifika ta' jekk il-mudell kummerċjali li ntuża mill-Konċessjonarju huwiex vijabbli u jekk irrapprezentax valur għall-flus;
4. Skrutinju tal-qafas kuntrattwali li jirregola l-konċessjoni:
 - a. Verifika ta' jekk is-servizzi provduti rrispettawx ir-rekwiżiti tal-kuntratt;
 - b. Verifika ta' jekk twettqux l-miri kuntrattwali relatati mal-iżvilupp mill-ġdid, il-manutenzjoni, il-ġestjoni u l-operat tas-siti;
 - c. Skrutinju tal-provvedimenti li jirregolaw id-drittijiet tax-xogħol ta' uffiċjali pubbliċi fir-rigward tal-konċessjoni;
 - d. Skrutinju tas-salvagwardji li huma fis-seħh biex jiżguraw li ċ-ċittadini Maltin jirċievu trattament fil-hin;
5. Skrutinju tal-bażi ta' valutazzjoni tas-siti mogħtija lill-Konċessjonarju, il-metodu tat-trasferiment u jekk dan kisirx ir-regolamenti dwar l-ghajnuna mill-istat; u
6. Skrutinju tal-proċess permezz ta' liema konċessjoni għet trasferita minn Vitals Global Healthcare Ltd u Vitals Global Healthcare Management Ltd lil Steward Health Care.

cont...

Dan huwa qafas preliminarju tal-investigazzjoni mitluba u l-Uffiċċju jirriserva d-dritt li jagħmel tibdiliet jekk meħtiega. Madankollu, kif ġie diskuss f'seduti ta' dan il-Kumitat, l-Uffiċċju se jkompli josserva l-prassi li l-investigazzjonijiet jiġu trattati skont meta saret it-talba.

Verzjoni bl-Ingliż tat-termini ta' referenza hi annessa ma' din l-ittra.

Tislijiet,

A handwritten signature in blue ink, appearing to be 'C. Deguara', written in a cursive style.

C. Deguara

Ink.

Terms of Reference

1. Review the method utilised for the award of the concession to Vitals Global Healthcare;
2. Analyse the evaluation of submissions leading to the award of the concession;
3. Determine whether the business model employed by the Concessionaire is feasible and whether it represents value for money;
4. Review the contractual framework regulating the concession:
 - a. Verify whether services provided adhered to contract requirements;
 - b. Verify whether contractual targets relating to the redevelopment, maintenance, management and operation of the sites have been realised;
 - c. Review provisions regulating the labour rights of public officials in relation to the concession; and
 - d. Review what safeguards are in place to ensure that Maltese nationals receive treatment in a timely manner;
5. 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
6. Review the process by which the concession was transferred from Vitals Global Healthcare Ltd and Vitals Global Healthcare Management Ltd to Steward Health Care.

Appendix E | Health Services Delivery Agreement – Applicable deduction for ordinary service failure

For each Ordinary Service Failure, the following deduction shall apply:

$$\mathbf{MDF_n = €15 \times MDD_n \times Beds}$$

Where:

MDF_n = The applicable deduction for each Ordinary Service Failure for the Month;

MDD_n = The number of days during which the Ordinary Service Failure persists for that Month after expiration of the cure period;

Beds = The number of Beds in a Functional Area being impacted by the breach.

During the Month, the total Ordinary Service Failure deductions shall be aggregated as follows:

$$\mathbf{MDF_m = \text{Sum} (MDF_{nm})}$$

Where:

MDF_m = The total applicable deduction for all Ordinary Service Failures for the Month;

MDF_n = The applicable deduction for each Ordinary Service Failure for the Month.

Appendix F | Health Services Delivery Agreement – Applicable deduction for major service failure

For each Major Service Failure, the following deduction shall apply:

$$\mathbf{MJF_n = €45 \times MJD_n \times Beds}$$

Where:

MJF_n = The applicable deduction for each Critical Service Failure for the Month;

MJD_n = The number of days during which the Critical Service Failure persists for that Month after the expiration of the cure period;

Beds = The number of Beds in a Functional Area being impacted by the breach.

During the Month, the total Critical Service Failure deductions shall be aggregated as follows:

$$\mathbf{MJF_m = \text{Sum} (MJF_n^m)}$$

Where:

MJF_m = The total applicable deduction for all Critical Service Failures for the Month;

MJF_n = The applicable deduction for each Critical Service Failure for the Month.

Appendix G | Health Services Delivery Agreement – The Net Health Services Delivery Fee

The Net Health Services Delivery Fee that would be payable to the Concessionaire during a month shall be computed as follows:

$$\text{NHSDF}_m = (\text{BF}_m - (\text{ASF}_m + \text{ASOPA}))$$

Where:

NHSDF_m = The Net Health Services Fee in Euro for the Relevant Month M;

BF_m = The Basic Health Services Delivery Fee in Euro for the Relevant Month M;

ASF_m = The Aggregate Service Failure Deductions in Euro for the Relevant Month M;

ASOPA = The Annual Surgical Operations Performance Adjustments

Where:

$$\text{ASF}_m = \text{MDF}_m + \text{MJF}_m$$

Where:

$$\text{ASOPA} = \text{ATNSOy} * \text{€}500$$

ATNSOy refers to the Adjusted Target Number of Surgical Operations and is derived as follows:

$$\text{ATNSOy} = (\text{WLPS} + \text{SMDH})$$

WLPS refers to the number of patients that are on the waiting list for surgeries at the GGH.

SMDH refers to the number of patients that have gone to the MDH for a surgery because the GGH has failed to provide the necessary surgical operations. This provision excludes any complex surgeries that are not currently offered at the GGH and any patients that have opted to go to the MDH for surgery as a choice and did not approach the GGH.

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May 2021 National Audit Office Annual Report and Financial Statements 2020

NAO Audit Reports

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