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National Audit Office
MALTA

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

Part 3 | Steward Health Care assumes control of the concession

MAY 2023

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Report by the Auditor General
May 2023

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List of abbreviations

$	US dollars
ALOS	average length of stay
BOV	Bank of Valletta
capex	capital expenditure
CEO	Chief Executive Officer
CHIA	Centre for Health Information and Analysis
CIO	Chief Information Officer
CMO	Chief Medical Officer
COO	Chief Operations Officer
CPAS	Clinical Patient Administration System
CPSU	Central Procurement and Supplies Unit
CRPD	Commission for the Rights of Persons with Disability
DoC	Department of Contracts
EDP	excessive deficit procedure
ENT	Ears, Nose and Throat
EPC	Engineering, Procurement and Construction
ERA	Environmental Resources Authority
EU	European Union
FATF	Financial Action Task Force
FMS	Foundation for Medical Services
GGH	Gozo General Hospital
HAPI	hospital acquired pressure injuries
HCC	Health Construction Committee
HMC	Health Management Committee
HR	human resources
HSDA	Health Services Delivery Agreement
INDIS	Industrial Innovative Solutions
IT	information technology
KGRH	Karin Grech Rehabilitation Hospital
KPI	key performance indicator
LSA	Labour Supply Agreement
MAM	Medical Association of Malta
MBR	Malta Business Registry
MDH	Mater Dei Hospital
MEH	Ministry for Energy and Health
MFH	Ministry for Health
MFIN	Ministry for Finance

MIP	Malta Industrial Parks
MMB	Maintenance Monitoring Board
MOT	Ministry for Tourism
MoU	memorandum of understanding
MSPP	Malta Strategic Partnership Projects Ltd
NAO	National Audit Office
NI	National Insurance
NSO	National Statistics Office
OPM	Office of the Prime Minister
OPU	Orthotics and Prosthetics Unit
OSINT	open-source intelligence
PA	Planning Authority
PAC	Public Accounts Committee
PC	Projects Committee
PEP	politically exposed person
PMB	Project Monitoring Board
PPP	public private partnership
PS	Permanent Secretary
Q	quarter
QAB	Quality and Assurance Board
QMUL	Queen Mary University of London
RfP	Request for Proposals
SAMB	State Aid Monitoring Board
SCA	Services Concession Agreement
SCH	Superintendence of Cultural Heritage
SHC	Steward Health Care
SLH	Saint Luke's Hospital
TFEU	Treaty on the Functioning of the European Union
UBO	ultimate beneficial owner
UK	United Kingdom
USA	United States of America
VGH	Vitals Global Healthcare
WSC	Water Services Corporation

Executive summary

1. On 21 November 2016, the Union Ħaddiema Magħqudin – Voice of the Workers and the Medical Association of Malta, submitted correspondence to the Chair Public Accounts Committee (PAC) wherein an investigation of the contracts awarded by the Government to Vitals Global Healthcare Ltd (VGH) was requested. The contracts related to a concession for the redevelopment, maintenance, management and operation of the Gozo General Hospital (GGH), the Karin Grech Rehabilitation Hospital (KGRH) and the Saint Luke's Hospital (SLH).

2. The National Audit Office (NAO) set the terms of reference against which it was to conduct the audit, which were referred to the Chair PAC by the Auditor General on 16 January 2018. 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:
      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 (SHC).

3. The extent of the terms of reference set and their inherent complexity necessitated that the NAO segment its audit in three parts. The first part focused on the procurement process leading to the award of the concession to the VGH, therefore addressing terms (a) to (c). This part was published on 7 July 2020 and was complemented by an addendum, published on 28 July 2020.

The addendum 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 focused on terms (d) and (e), that is, the period within which the concession was under the control of the VGH and was published on 14 December 2021. This final part of the audit addresses the change of control of the concession registered in February 2018, when the SHC acquired the VGH. This completes the NAO's review through the fulfilment of term (f). Hereunder are the salient conclusions arrived at by this Office in this respect.

4. The concession for the redevelopment, maintenance, management and operation of the sites at the GGH, the KGRH and the SLH was awarded by the Government to the VGH in September 2015, with control assumed by the SHC in February 2018. During the period reviewed, the concession remained in a transition phase, wherein the SHC bore an obligation to retain the level of service existent prior to the concession and to undertake the capital investment that was agreed to.

5. The initial interactions between the SHC and the Government immediately drew the NAO's concerns for the conflicting accounts and the lack of records regarding these crucial exchanges obscured visibility. The limited disclosures by the Prime Minister, the curt replies by the Chief of Staff OPM, the failure of the Minister for Tourism to attend any request made by the NAO, the omission of the Minister for Health from any meaningful involvement on the fate of this public health-related concession, the allegations of duress levelled by the Director VGH, and the anomalous role played by the Chief Executive Officer VGH, later appointed the Chief Executive Officer SHC International, corroborate this Office's understanding that this concession remained one distant from the standards of accountability and transparency expected of Government.

6. The reason for the limited timeframe within which the SHC was spurred on to act by the Government and its willingness to do so were also matters that remained obscure to the NAO. The false sense of urgency heightens this Office's concerns about whether Government's interests were served and raises doubts on the conduct of those involved in the change of control of the concession. Such was the haste of those representing Government, that Cabinet was only requested to endorse the transfer of the concession after authorisation had already been granted by the Minister for Tourism and Malta Industrial Parks (MIP) Ltd to the VGH.

7. Unfortunate parallels may be drawn between the incoherent approach adopted by the Government in its original grant of the concession to the VGH and its subsequent consent for the transfer of the same concession to the SHC. In its award of the concession to the VGH, the incoherence was seen in the failure by the Government to appropriately plan for the concession, its failure to involve the MFH and to maintain balance in the transaction through the several side agreements entered into by the Minister for Tourism following award. At the point of change of control to the SHC, this incoherence is evidenced in the fact that Cabinet's approval was sought after the Minister for Tourism granted authorisation, that the CEO SHC sought the clearance of the Chief of Staff OPM to communicate with the Minister for Health on what was a health concession, and the absence of the MFH from key stages in the process.

8. With control of the concession secured by the SHC, its objective for negotiations was that of rendering the concession bankable, while the Government's focus was essentially on addressing the concession's on-balance sheet classification. These negotiations ultimately proved to no avail, for the objectives of the Government and the SHC remained diametrically opposed and the resulting differences were irreconcilable from the outset. The NAO had no visibility over most parts of the negotiation process, with glimpses caught through the review of key documents and the recollections of those involved and willing to disclose. Nevertheless, it was evident that, overall, the process of negotiation between the SHC and the Government lacked structure and direction.

9. The unorthodox dynamic that persisted between the Prime Minister and the Minister for Tourism, to the detriment of the Minister for Health's ability to negotiate with the SHC, remained a matter of grave concern to the NAO. The delegation of responsibility for a health concession to the Minister for Tourism was deemed illogical by the NAO and provided a convenient opportunity for the exploitation of Government, creating weakness where there ought to have been none, a weakness all to readily leveraged by the SHC. The most evident exploitation was that secured by the SHC in terms of Government's liability to pay €100,000,000 and the sum of the lenders' debt to the Concessionaire in case of court-declared nullity of the concession agreements, irrespective of the party attributed the default, a situation precipitated by the Minister for Tourism and engineered through his misleading of Cabinet. Compounding matters was that Cabinet's authorisation was not sought by the Minister for Tourism in instances when Government acted as guarantor in several financing agreements entered into by the SHC and the Bank of Valletta plc (BOV).

10. While the first attempt at renegotiating the concession stalled due to the political upheaval that persisted in late 2019 and early 2020, resulting in the resignation of the Prime Minister and the Minister for Tourism and an overall change in approach towards negotiations, subsequent attempts failed because that which the Government and the SHC sought to renegotiate proved not permissible in terms of the concession agreements and relevant legislation, for the parties now sought to fundamentally alter the nature of the concession. That the renegotiated contractual frameworks constituted a fundamental departure from the nature of the concession as contracted ought to have been evident to both parties. Earlier recourse to the DoC and the State Advocate would have avoided futile time and effort being expended by the parties. Certainty on the parameters of negotiation ought to have been established at the outset. The NAO is of the opinion that the belated verification by the Government as to the legality of the proposed restructuring of the concession was an avoidable omission.

11. The core agreement regulating the concession was the Services Concession Agreement (SCA); however, the NAO noted several gaps in the contractual terms and obligations that remained unfulfilled. The change of control of the concession from the VGH to the SHC highlighted a key contractual gap of the SCA, which was silent on the regulation of such changes prior to the completion date, the period that the concession remains in to date. While regularity of the change of control from the VGH to the SHC was rendered moot in view of the authorisation

sought and given, the subsequent change in control over the SHC was undertaken without any input of Government.

12. Government's visibility over the concession was insufficient, for it failed to constitute the Health Management Committee and the Maintenance Monitoring Board, which were committees of oversight contemplated in the SCA. Although deficiencies were also noted by this Office in terms of the regularity of meetings held and the fulfilment of requirements by the Project Monitoring Board and the Health Construction Committee, two other committees of oversight, the NAO is cognisant that the relevance of these committees was rendered secondary to the more fundamental and significant difficulties encountered in the implementation of the project, which difficulties were not attributable to the committees but resulted in their redundant functioning.

13. The effort of the SHC in devising plans for the sites did not translate into a tangible outcome, for the design phase of the concession was hindered by the broader stalemate in the negotiations between the Government and the SHC. Aside from the completion of the Barts Medical School and pockets of progress registered in other respects, all other concession milestones were not achieved while the concession was under the control of the SHC. The Government and the SHC's inability to agree on crucial elements hindered the implementation of the concession and the envisaged improvement in health care services. Again, the SCA was silent on the Concessionaire's failure to provide evidence of having sourced financing, with the impasse between the Government and the SHC ultimately detrimental to the taxpayer.

14. The SCA provided a mechanism for the address of specific instances of default. One such case of default was the SHC's failure to submit a performance guarantee. In this and in other breaches, the Ministry for Health was reluctant to register concessionaire events of default to allow for negotiations to proceed; however, with the stalling of progress between the parties, it remains to be seen whether the Government will enforce the contractual mechanisms of redress at its disposal.

15. The Health Services Delivery Agreement (HSDA) regulated the service delivery element of the concession. The corresponding monitoring function in terms of quality and performance standards was aptly fulfilled by the Quality and Assurance Board, which met on a regular basis, was organised in its approach, diligently established benchmarks of performance and highlighted challenges encountered in service delivery, coordinating when so required to facilitate the work of multiple stakeholders. Fundamental to the work of the Board were the quarterly performance reports submitted by the SHC for the GGH and the KGRH which, despite limitations in the sourcing of data, captured essential information regarding the level and quality of service, thereby providing the Government and the SHC with insight thereon. Notwithstanding this, it was not possible for the NAO to establish whether progress was registered following the concession of these hospitals, for the introduction of these metrics coincided with the SHC assuming responsibility and therefore no comparators are available.

16. Other metrics established to gauge the performance of the concessionaire were a series of key performance indicators specified in the HSDA, which indicators corresponded to building and equipment, employee relations and labour management, and service delivery and quality of care. While the Ministry for Health and the SHC contended that these indicators became obligatory after the completion of the project, the NAO maintained otherwise, for the HSDA specified 2018 as the point of applicability.

17. Regardless, mixed levels of progress were registered across the diverse array of services provided at the GGH and the KGRH. However, the SHC's failure to effect the capital investment as contracted stunted the advancement of health services provided and in the case of the SLH resulted in the dereliction of these facilities. This against a backdrop of payments by the Government increasing substantially year-on-year. Over the period 2016 to 2021, the Government paid the Concessionaire €267,568,404, with €52,687,218 paid to the VGH and €214,881,187 to the SHC. Salaries of resources made available to the Concessionaire by the Government during this period accounted for a further disbursement of €188,510,970. Therefore, the total cost incurred by the Government with respect to the GGH, the KGRH and the SLH between June 2016 and end 2021 was €456,079,372.

18. In the NAO's opinion, the value for money that Government sought to realise and the fair allocation of risk between it and the Concessionaire was fundamentally undermined on entry to the Labour Supply Agreement and its Addendum. Through these Agreements, the Government provided the VGH with 1,536 resources, which bore a value far more than the reimbursement secured, €32,234,637. Aggravating matters was that the Government committed to a mechanism of revision of costs that was not just and that did not capture the real annual increase in salaries. This situation persisted when the SHC took over the concession, with each passing year aggravating the discrepancy between the real cost to Government of resources made available to the Concessionaire and the amounts recovered in relation thereto.

19. As regards the Emphyteutical Deed, the inconsistent approach adopted by the MIP Ltd in two circumstances relating to a change of control of the concession, arising in each case from a change in the ultimate beneficial owner (UBO) of the Concessionaire, drew the attention of the NAO. In the first instance, when control shifted from the VGH to the SHC, the authorisation of MIP Ltd for the transfer of the shares was sought, consistent with the understanding that the UBO – and therefore ownership of the Concessionaire – had in fact changed. In this context, this Office deemed the treatment of the transfer as an intra-group transfer by the MIP Ltd, when it decided not to charge a laudemium, as incongruent with its consent for the sale of the shares and the actual change in ownership. In the second instance, when control of the concession shifted from SHC International LLC to SHC Systems LLC, Industrial Innovative Solutions Malta Ltd – previously MIP Ltd – was not notified of the transfer, despite that the UBO of the SHC had changed. The NAO contends that this too did not qualify as an intra-group transfer and therefore a laudemium was to be charged by the Government. Despite these shortcomings, the Emphyteutical Deed did not specify any consequence for failure to obtain consent for the transfer of the sites yet indicated that the non-payment of a laudemium would result in the nullity of the transfer.

20. In turn, the SCA did not consider the Concessionaire's failure to notify the Government of a change in ownership as a breach constituting grounds for termination, thereby bringing to the fore the fact that no mechanism was provided for to ensure that the Government had visibility and a say in the authorisation or otherwise of who controlled three public hospitals. This, and other deficiencies cited, highlight the flawed contractual framework that the Government consented to and must now be regulated by.

Chapter 1| Introduction

1.1 Examining a contentious concession

1.1.1 In late November 2016, the Union Ħaddiema Magħqudin – Voice of the Workers and the Medical Association of Malta (MAM) requested the Chair Public Accounts Committee (PAC) to investigate the contracts awarded by the Government to Vitals Global Healthcare Ltd (VGH) (Appendix A refers). The request submitted by the Unions related to the Gozo General Hospital (GGH), Saint Luke's Hospital (SLH) and Karin Grech Rehabilitation Hospital (KGRH).

1.1.2 Related correspondence was subsequently submitted by the Government members on the PAC in December 2016 (Appendix B refers) and by the Opposition members on the PAC in January 2018 (Appendix C refers).

1.1.3 The Auditor General provided the terms of reference that were to guide the National Audit Office (NAO) in its audit of the contract entered into by the Government and the VGH in correspondence dated 16 January 2018 (Appendix D refers). Taking cognisance of the correspondence submitted by the Unions and that by the Government and Opposition members on the PAC, the Chair PAC was informed of the following terms:

a. determine whether the business model to be employed by the concessionaire is feasible and whether it represents value for money;

b. analyse the evaluation of submissions leading to the award of the concession;

c. 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;

d. 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

e. review the process by which the concession was transferred from VGH Ltd and VGH Management Ltd to Steward Health Care (SHC).

1.1.4 The breadth of the terms set together with their inherent complexity necessitated that the audit be segmented into three parts. The report on the first part of the audit, 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. The second part, published in December 2021, provided a review of the contracts entered into by Government and the VGH, focusing on the extent of their implementation until the eventual acquisition of the concession by the SHC, thereby addressing terms (d) and (e). This third and final part of the audit focuses on the change of control of the concession from the VGH to the SHC and will address term (f).[1]

1.2 Revisiting the tender process

1.2.1 The logical starting point of the first part of the NAO's audit of this concession is the issuance of the request for proposals (RfP) in March 2015 for the granting of a services concession for the redevelopment, maintenance, management, and operation of the GGH, the KGRH and the SLH. Following the evaluation of bids received and negotiations with the preferred bidder, in September 2015, Projects Malta Ltd notified the VGH of the Government's intention to award it the concession. Notwithstanding this, pivotal in determining later developments was an MoU signed between the Government and the developers and operators of a proposed project relating to the setting up of a Gozo-based medical complex. Fundamental was the fact that the majority of the proponents of this project would later constitute the VGH.

1.2.2 The MoU, dated 10 October 2014, was signed by the Government, represented by the Hon. Christian Cardona, then Minister for the Economy, Investment and Small Business, 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.

1.2.3 Following its review of the MoU, the NAO established that there existed significant overlap between the investors that entered into the MoU with the Government and the owners of the VGH, the company that the Government subsequently awarded the concession to. Second, the nature of the project – as outlined in the MoU and as subsequently defined in the RfP – remained unchanged as the refurbish and operate model was retained, revenue by the Government always guaranteed in the envisaged long-term agreements, medical tourism underpinned feasibility,

[1] The term 'change of control' is interchangeably used with 'transfer'; however, is to be understood in terms of the relevant provisions regulating 'change of control' in the concession agreements.

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 KGRH and the SLH. 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.

1.2.4 Although the MoU provided 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, the 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 following an RfP.

1.2.5 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.

1.2.6 The NAO further concluded that the feasibility assessment in relation to the project, which ought to have established the basis for the 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.

1.2.7 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 the 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 the Government or its representatives.

1.2.8 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.

1.2.9 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.

1.2.10 The bid by the VGH was assessed by the Evaluation Committee in terms of its commercial, technical and financial strength, as well as 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 the Government.

1.2.11 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 the Government with the investors of the VGH rendered the entire process dubious, irrespective of whether the process adhered to procedural and regulatory requirements.

1.2.12 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 the Government to verify matters relating to the VGH in its capacity and relationship to it as the preferred bidder was grossly inadequate.

1.3 A review of the contractual framework

1.3.1 In mid-2015, negotiations between the Government-appointed Negotiation Committee and the VGH, as preferred bidder, commenced. The key elements of the negotiations undertaken comprised the ownership and corporate structure, the concession agreement, financing, the boards of oversight, ground rent, the health services to be delivered, quality standards, medical tourism and termination. In November 2015, the Government, represented by the Minister for Energy and Health and the VGH entered into the Services Concession Agreement (SCA) and the Health Services Delivery Agreement (HSDA). The SCA provided a framework for the concession for the redevelopment and improvement of the GGH, the KGRH and the SLH, while the HSDA regulated the terms and conditions for the provision of healthcare and ancillary services. A few months later, in January 2016, the parties entered into the Labour Supply Agreement (LSA), which allowed for the supply of the Government's employees to the VGH. Several addenda and side letters to these agreements were subsequently entered into. In March 2016, a deed of emphyteusis granting temporary title over the sites to the VGH was finalised with Malta Industrial Parks Ltd (MIP). The emphyteutical term was of 30 years; however, on expiry, this could be extended for an additional 69 years at the sole discretion of the VGH. In the second part of its audit, the NAO reviewed the implementation of the contracts entered into while the concession remained under the control of the VGH, that is, until February 2018.

1.3.2 Concerns arise on the negotiation process between the Government and the VGH, which process remained opaquely concealed to the NAO due to the lack of documentation kept and the 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 concession's scope, altered the risk level 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 representatives' failure to consult with critical stakeholders. This resulted in the concession failing to meet its objectives, be it the health infrastructure improvements and the classification of the concession as off-balance sheet, with the VGH's capital expenditure on the project registered on the Government's accounts.

1.3.3 The dichotomy characterising this project, with the Energy division within the MEH overseeing the capital investment and the Health division within the same Ministry tasked with operational management, created ideal grounds for the VGH to capitalise on Government's weaknesses. This allowed for the concession to remain unimplementable, an insurmountable challenge and irreparable situation for the Government to manage, whose administrative and political weaknesses were readily exploited by the VGH.

1.3.4 None of the major concession milestones were achieved when the concession was under the VGH's control. The VGH's inability to secure financing was the crucial shortcoming on which rested all subsequent failures registered in this concession by the 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 VGH's failure 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.

1.3.5 Significant concerns emerged in the NAO's review of the contractual framework regulating the concession. In the SCA, critical departures between that originally stated in the RfP, that subsequently contracted and later amendments effected substantially altered Government's control over completion of the concession milestones. The changes effected consistently favoured the VGH's interests, with the Government rendered powerless in holding the Concessionaire accountable.

1.3.6 Although the Government established the health deliverables expected of the concession through the HSDA, these were quickly revised. The revisions were consistently adverse to the 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 the Government coupled with a corresponding increase in the amount payable.

1.3.7 The LSA stipulated that the Government employees to be deployed with the VGH as leased resources 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 this Agreement was the Government's ill-preparedness for this concession. Most glaring 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 through public funds.

1.3.8 The NAO established that no valuation of the sites was undertaken by the Government prior to their transfer through the Emphyteutical Deed. Concerns emerge on the mismatch between the 30-year concession period and the potential 99-year title granted over the sites and whether the Government will realise the economic benefits envisaged through their continued use for medical tourism.

1.3.9 In the second part of its audit of the concession, the NAO made several attempts to meet with the Dr Konrad Mizzi, which requests remained unaddressed. The gravity of this failure was compounded by the pivotal role played by Dr Mizzi in this concession. His failure to attend to the several requests made by the NAO was deemed a serious shortcoming 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.

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 (Chapter 396) and in terms of practices adopted by the NAO. Other legislation reviewed included the Public Procurement Regulations (Legal Notice 296 of 2010), the Concession Contracts Regulations (Legal Notice 353 of 2016), the Disposal of Government Land Act (Chapter 268), the Companies Act (Register of Beneficial Owners) (Amendment) Regulations (Legal Notice 247 of 2020) and Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concessions. The United

Kingdom's (UK) Companies Act, 2006 was also referred to in the conduct of this verification. 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.

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 key aspects of the concession, particularly in relation to oversight and implementation;

b. the Ministry for Tourism (MOT), which Ministry played a key role in the vetting of the SHC and provided this Office with the financing agreements entered into wherein the Government acted as guarantor;

c. the Cabinet Office, which Office provided the NAO with memoranda submitted to Cabinet and excerpts of minutes that proved key in understanding the salient developments that characterised this concession;

d. Mr Keith Schembri, the former Chief of Staff OPM, in view of his role in facilitating the change of control of the concession from the VGH to the SHC;

e. the SHC, particularly in terms of how the company's involvement in this concession came to be and its perspective on the negotiations that ensued. Input in this respect was sought from Dr Armin Ernst, the Chief Executive Officer (CEO) and President of SHC International (hereinafter referred to as CEO SHC International) and other officials of the SHC;

f. Mr Ram Tumuluri, a former director of the VGH (hereinafter referred to as Director VGH), with queries addressed thereto – through his legal representatives, Mifsud Advocates – focusing on how the transfer of the concession to the SHC originated;

g. Industrial Innovative Solutions (INDIS) Malta Ltd (formerly Malta Industrial Parks Ltd), for clarifications relating to the Emphyteutical Deed;

h. the Malta Business Registry (MBR), particularly in relation to issues of ownership of SHC subsidiaries and their financial statements;

i. Malta Enterprise, in view of its role as signatory to the agreement relating to the Barts Medical School with the Queen Mary University of London (QMUL); and

j. other stakeholders, namely, MFIN, the State Aid Monitoring Board (SAMB), the Office of the Commissioner for Revenue, the Malta Strategic Partnership Projects Ltd (MSPP) (formerly Projects Malta Ltd), Mifsud Bonnici Advocates, RSM Malta and the Negotiation Committee tasked with bringing to a close and formalising the agreement between the Government and the VGH.

1.4.3 Of concern to the NAO was that Malta Enterprise failed to reply to any of the queries submitted. This Office sought information relating to the lease agreement entered into by the Government with the QMUL for the Barts Medical School and an account of the payments received by Malta Enterprise in this respect. Similarly, queries submitted to the SAMB remained unaddressed.

1.4.4 Aside from documentation reviewed, the NAO held interviews with persons who were involved in authorising the change of control of the concession, the implementation of the obligations emanating from the concession agreements and oversight thereof. Interviews were held with the Deputy Prime Minister and Minister for Health, 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) in office during the period under review and the incumbent PS, the Director General (DG) Finance and Administration, the Financial Controller and advisors. Other interviews held by this Office were with the former Prime Minister, Dr Joseph Muscat (hereinafter referred to as the Prime Minister), and the PS Ministry for the Economy, European Funds and Lands, in view of his previous office held as PS at the MOT (hereinafter referred to as PS MOT). In addition, the NAO met with the Executive Director and President of SHC Malta (referred to as President SHC Malta throughout the report), the General Counsel of SHC International and a Partner at Mamo TCV (hereinafter referred to as Legal Advisor SHC), which firm was engaged by the SHC to provide legal assistance in its negotiations with the Government. 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.

1.4.5 Attempts were made to obtain the views of Dr Konrad Mizzi regarding his pivotal role in several facets of the concession, most notably in authorising the change of control and in representing Government as guarantor for funds secured by the SHC. Despite the several attempts made by email and registered post, Dr Mizzi did not respond to the Office's requests for a meeting. The NAO confirmed the receipt of the various requests sent by this Office to Dr Mizzi. This failure to respond on the part of Dr Mizzi was deemed a matter of grave concern by the NAO, compounded no less by the centrality of his role in the concession.

1.4.6 As a general rule, ministers and public officers cited throughout the report, unless otherwise specified, are referred to by their designation at the time reported on. Furthermore, reference to the concessionaire in its broadest sense is often made using the term 'SHC'. 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 or the obligations arising therefrom. When it was imperative for the NAO to refer to the SHC in a specific sense, that is, in relation to a particular company under its control, this was appropriately cited.

1.4.7 The period reported on in this part of the NAO's audit notionally commences in February 2018, that is, the point at which the SHC assumed control of the concession. However, it is evident that events leading to the change in control preceded February 2018, and therefore, this Office extended its review to capture salient developments connected therewith. Although the concession is still in the transitionary period and subject to ongoing developments, the NAO established December 2021 as the cut-off date for its review. On occasion, this Office reported on matters that occurred after this date; however, this was limited to issues of significant importance or to matters that were resolved after December 2021, thereby allowing for completeness.

1.4.8 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 the optimal use of public resources.

Chapter 2| Transfer of the concession to Steward Health Care

2.1 Machinations leading to the change in control of the concession

No honour among concessionaires

2.1.1 The NAO sought to establish how the change of control of the concession for the GGH, the KGRH and the SLH from the VGH to the SHC originated. This concession was awarded by the Government to the VGH on 9 September 2015. In submissions made to this Office, the SHC indicated that, on 1 September 2017, the then Chief of Staff OPM met with representatives of the SHC in New York. According to the SHC, the backdrop to the meeting was the VGH's lack of performance of its obligations in terms of the concession agreements and the Government's consideration to terminate the concession due to VGH default.

2.1.2 Given that indicated by the SHC, the NAO sought further information from the Chief of Staff OPM regarding his involvement in developments leading to the change of control of the concession from the VGH to the SHC. Of specific interest was the nature of his involvement; on whose instructions he acted; with whom, when and where meetings were held; and what was discussed during these meetings. In a succinct submission to this Office, the Chief of Staff OPM indicated that the CEO SHC International had contacted him through a telephone call while on an official visit with the Prime Minister at the United Nations in New York. According to the Chief of Staff OPM, the CEO SHC International indicated that the SHC was interested in taking over the VGH. Providing more context in this respect, the Chief of Staff OPM noted that the CEO SHC International was formerly the CEO VGH. While indicating that he had no records in his possession to substantiate that stated, the Chief of Staff OPM emphasised that he acted in his official capacity.

2.1.3 Given the context to the interaction between the CEO SHC International and the Chief of Staff OPM, the NAO considered the perspective of the Prime Minister. A different version of events was provided to the NAO by the Prime Minister. The Prime Minister indicated that the VGH had informed the Government that the SHC was interested in the concession and referred to a meeting held between the VGH and the Chief of Staff OPM. According to the Prime Minister, during this meeting, the Chief of Staff OPM was informed that discussions between the VGH and the SHC were at an advanced stage and the parties sought to ascertain whether the Government would consent to the transaction. The Prime Minister stated that this was the point when he was informed of the possible change of control of the concession. Further elaborating on the initial contact between the parties, the Prime Minister was unaware of whether the VGH approached the SHC or vice-versa; however, he emphasised that it was not the Government who initiated contact with the SHC. According to the Prime Minister, the VGH encountered difficulties to implement the concession agreements and was therefore actively seeking a third party to take over the concession. Nonetheless, the Prime Minister acknowledged that this was his understanding of the situation at the time and that he had not met with the VGH in this respect. In addition, the Prime Minister indicated that, at a later stage, Dr Ralph de la Torre – a director of the SHC – had visited Malta for talks with him. The Prime Minister highlighted his enthusiasm for the possible takeover by the SHC, citing the company's positive track record, that Malta was to be its entry point into Europe and the endorsement of the American Government.

2.1.4 The Minister for Health provided an element of corroboration in submissions made to the NAO. Referring to the September 2017 meeting in New York, for which the Prime Minister and the Chief of Staff OPM were present, the Minister for Health cited this event as the point of contact between the Government and the SHC represented by the CEO SHC International. According to the Minister for Health, it was within this setting that the CEO SHC International referred to the ongoing discussions between the VGH and the SHC and enquired whether the Government would be willing to endorse a change in control. The Minister for Health indicated that, to his knowledge, it was not Government that initiated contact with the SHC, but it was the CEO SHC International who was the link between the VGH and the SHC, and who would eventually also be the link between the SHC and the Government.

2.1.5 The limited information provided to the NAO as to who made the initial approach prompted this Office to enquire on the matter with the SHC. In particular, the NAO sought to understand how the SHC's interest in this concession came about. In submissions made, the SHC ambiguously noted that many parties were involved, including Government's legal representatives. No other information was disclosed by the SHC in this regard.

2.1.6 More detailed submissions regarding the process of transfer of the concession from the VGH to the SHC were made by the CEO SHC International. The role of the CEO SHC International at this stage of the process warrants an element of explanation. Based on publicly available information, the CEO SHC International occupied the position of Chief Administrative Officer SHC between April 2015 and June 2016. He later relinquished this role to assume that of CEO VGH in July 2016, a role he occupied until August 2017. In September 2017, he was engaged by SHC International as CEO and President. The relevance of this information is that the change in role from the VGH to the SHC coincided with the commencement of interaction between the SHC and the Government regarding the possible change in control of the concession. In clarifications submitted to the NAO, the CEO SHC International indicated that he was on leave from the VGH from January 2017 and terminated his employment therewith effective August 2017. The CEO SHC International maintained that during this period, he had no involvement in the administrative affairs of VGH operations in Malta. Following his engagement with SHC International in September 2017, he was involved in the early discussions regarding the concession. Given his former role as CEO VGH and his subsequent engagement as CEO SHC International, the latter company deemed his background as relevant in its consideration of the implications of taking over the concession.

2.1.7 Of interest to the NAO was that the CEO SHC International referred to the SHC's consideration of the concession as contingent on a request by the Government being formalised. Elaborating on the context to the Government's willingness to engage with the SHC, the CEO SHC International referred to the serious concerns about the VGH that had been expressed by government officials, the media and others. The concerns related to the VGH's inability to settle dues and its failure to fulfil contractual obligations, which concerns had led the Government to consider the implications of a VGH default. In turn, the SHC cited other reasons for the Government to be concerned. First, was the failure of the Government to properly conduct the selection process leading to the award of a 30-year concession to the VGH that had failed at the outset. Second, were the broader negative implications for the Government that would ensue were it to take over the concession in the context of the international public-private partnership (PPP) market, which action would have drastically undermined the reputation and perception of the Maltese PPP process.

2.1.8 Following the September 2017 New York meeting, the Government and the SHC next met in London on 31 October 2017. No documentation regarding this meeting or any other meeting held during this phase of discussions was made available to the NAO by the Government. The only information sourced from the Government was that provided by the PS MOT, who referred to another meeting held in London with the CEO SHC International. In submissions made to the NAO, the PS MOT informed this Office that he was accompanying the Minister for Tourism on a visit unrelated to the concession between 4 and 11 November 2017. According to the PS MOT, the Minister for Tourism was directed by the Prime Minister to meet the CEO SHC International, as the SHC were in talks with the OPM regarding the possible takeover of the concession. The Prime Minister affirmed that he had informed the Minister for Tourism of all developments relating to the possible takeover. The PS MOT indicated that the meeting was likely held on 8 November 2017 or 9 November 2017. He recalled that this was an introductory meeting where the CEO SHC International had affirmed the SHC's interest in taking over the concession. Providing an element of context, the PS MOT indicated that, at the time, the Government was concerned with the slow pace of development of the concession, particularly in terms of the securing of the credit facilities that were required. Following this meeting, two actions were pursued. First, the PS MOT advised that prior to any discussions, the Government was to carry out a due diligence exercise on the SHC. Second, the technical representatives of both parties were to engage in discussions to determine how the SHC was to assume the role of the VGH. The PS MOT noted that the MFH were aware of these developments.

2.1.9 The NAO sought to corroborate that stated by the PS MOT with the Minister for Tourism. Despite this Office's several attempts to seek the views of the Minister for Tourism, these proved to no avail, with the Minister for Tourism failing to acknowledge or respond to any of the NAO's requests.

2.1.10 The NAO sought to understand why the MOT, as opposed to the MFH, was tasked with representing Government in relation to a concession primarily concerning public health services. In response to queries raised, the Prime Minister indicated that while the Minister for Health was informed of developments, the Minister for Tourism was an able project manager and that this was the reason for his involvement at this stage of the concession. The PS MOT acknowledged that an element of ambiguity existed with respect to this project, for on one hand it was a health-related project; however, on the other hand, it was also a PPP that comprised a commercial element. Elaborating in this respect, the PS MOT noted that initial discussions between the Government and the SHC centred on the commercial and legal elements of the concession, rather than the health-related aspects. The PS MOT highlighted the role played by the OPM in the allocation of responsibility for this project to the MOT, with direction given to the Ministry by the OPM. Of note was that the PS MOT attributed the prolonged involvement of the MOT – beyond entry into the contracts, which should have represented its exit from the concession – to the several difficulties in implementation that arose.

2.1.11 The general absence of the MFH in the transition of control from the VGH to the SHC was corroborated by the Minister for Health. In submissions to the NAO, the Minister for Health indicated that the MFH was not involved in any manner except for the fact that he was informed of a change in the concessionaire by the Prime Minister in October 2017. The Minister for Health highlighted that, over the prior months, he had expressed his dissatisfaction with the performance of the VGH and therefore the entry of the SHC was seen as a positive development, particularly in view of its reputation and track record. Notwithstanding this, the Minister for Health reiterated that he was not involved in any negotiations relating to the change of control.

2.1.12 The MFH confirmed that noted by the Minister for Health in stating that the Ministry was not involved in the change of control of the concession. According to the MFH, the Ministry became aware of this fact through reporting in the media. Queried by the NAO as to whether the MFH was aware of what triggered the change in control, the Ministry indicated that it was not aware of what motivated the sale or acquisition of shares by the VGH and the SHC, respectively. Nonetheless, the MFH acknowledged that the Ministry had no right to enquire into private matters between third parties, except for ensuring that the provisions of the concession agreements were honoured at all times.

2.1.13 Another aspect of interest to the NAO that emerged in its review of the initial interactions between the Government and the SHC was the conspicuous absence of the VGH. The incongruity of this situation is evident in that the concession was, at the time, owned by the VGH, yet the evidence at hand indicated interactions occurring between the Government and the SHC, to the exclusion of the VGH. In submissions to the NAO, the PS MOT indicated that he understood that the SHC would be negotiating with the VGH; however, acknowledged that the situation was unusual. While referring to the Government's frustration regarding the limited progress registered by the VGH, the PS MOT noted that the SHC was probably aware of this situation and had inside information as to the difficulties in the implementation of the concession and in the securing of financing. The PS MOT understood that this could have been perceived as a commercial opportunity by the SHC and it was in this context that the SHC approached the OPM.

2.1.14 A contrasting and perturbing perspective was that put forward by the Director VGH in submissions made to the NAO. The Director VGH elaborated on the situation of the VGH in the period prior to the transfer of the concession. He negated that reported in the press that, in the period leading to the change of control, the VGH was unable to secure financing for the concession due to its own crucial shortcomings. The Director VGH contested reports wherein it was stated that the VGH's inability to secure financing led to it approaching the SHC to take over the concession. Citing press reports that highlighted the VGH's state of dire emergency, lack of funds for salaries, and failures to audit, the Director VGH maintained that these claims were entirely false. According to the Director VGH, in 2017, the VGH was ready to close financing with a major European bank. The Director VGH claimed that the Concessionaire had never missed any salary payments and that, at the time when the concession was transferred, its tax returns and financial accounts were all in order. Moreover, the Director VGH asserted that the issues that had arisen since were the responsibility of the SHC, that had complete control of the concession since the transfer, following the due diligence undertaken by the SHC.

2.1.15 Regarding the initial interactions between the VGH and the SHC, the Director VGH noted that in early 2017, Dr Armin Ernst – then CEO VGH and later CEO SHC International – initiated negotiations between the parties. At this stage, the negotiations were intended for the SHC to become a cornerstone investor in the VGH. As part of the negotiations, the Director VGH met with Dr Ralph de la Torre, the then CEO SHC; however, no proposal or pitch was made by the CEO SHC or any other SHC representative to take over the VGH or the concession.

2.1.16 The Director VGH proceeded to highlight the anomalous yet central role that Dr Armin Ernst would play in the change of control of the concession by providing the NAO with context regarding the latter's engagement with the VGH and his involvement with the SHC. Based on the submission of the Director VGH, from August 2016 until January 2017, Dr Ernst was the CEO VGH, tasked with the day-to-day responsibility for managing the concession. In January 2017, Dr Ernst was placed on leave of absence for breaching his contractual obligations. Nonetheless, the Director VGH stated that, during this time, Dr Ernst was still employed by the VGH and paid a salary. In August 2017, Dr Ernst formally stepped down as CEO VGH after negotiations between the VGH and the SHC broke down. Shortly after, that is, on 18 September 2017, Dr Ernst requested the VGH to waive his employment contract's non-compete clause. This request was rejected due to reasonable concerns that Dr Ernst had already acted in breach to the detriment of the VGH and the concession. The Director VGH noted that these concerns would later be justified, as based on press coverage, Dr Ernst had been working for the SHC, while employed with the VGH. In addition, the Director VGH argued that neither the VGH nor he were aware of or would have consented to Dr Ernst's concurrent employment with the SHC while CEO VGH given the clear and consequential conflict of interest. A turning point was reached in September 2017, when the SHC employed Dr Ernst as President SHC International, with the Director VGH arguing that this rendered apparent why Dr Ernst sought a waiver to his non-compete obligations with the VGH.

2.1.17 According to the Director VGH, citing that reported in the media, in or about September 2017, the CEO SHC International approached the Minister for Health and proposed to the Government that the SHC take over the concession. The NAO reviewed the relevant press coverage cited by the Director VGH. Although that cited was accurate, no reference to when this interaction occurred was made.

2.1.18 The Director VGH emphasised that while it was endeavouring to secure financing from Deutsche Bank, Dr Armin Ernst had introduced the SHC to the Government and discussions for their takeover of the concession had initiated. Elaborating on how its efforts to secure financing were thwarted by the Government, the Director VGH noted that around September 2017 the Chief Legal Officer VGH submitted several requests to the Government for documentation required by Deutsche Bank necessary in its granting of financing. Despite the VGH's repeated requests and in spite of the Government's obligations arising from the concession agreements, the Government refused to provide the requested documentation or to otherwise assist the VGH with closing financing with the Bank. Around October 2017, based on the Government's hindrance of efforts by the VGH to secure financing, among other matters, the VGH provided the Government with notice that it was in default of its obligations under the concession.

2.1.19 Other hindrance to the securing of financing alluded to by the Director VGH was connected to the actions of the CEO SHC International. In late October 2017, Deutsche Bank informed the Director VGH that the CEO SHC International had requested a meeting with the Bank to discuss the VGH. According to the Director VGH, Deutsche Bank found this contact by the CEO SHC International as unconventional and while the Bank acceded to the request, it sought to keep the VGH abreast of developments and requested additional information as to the circumstances of the departure of the CEO SHC International from the VGH. The Director VGH claimed that the CEO SHC International became aware of this interaction between the VGH and the Bank and subsequently, through an intermediary, submitted correspondence to the Bank wherein he defamed the VGH and the Director VGH. According to the Director VGH, the defamatory statements made led Deutsche Bank to engage its anti-money laundering department, which in turn triggered an evaluation by its risk committee. The Director VGH indicated that all requests for information emanating from the risk analysis undertaken by the Bank were met by the VGH; however, he contended that this process delayed and frustrated the VGH in its efforts at securing financing from Deutsche Bank.

The machinations continue

2.1.20 The SHC informed the NAO that another meeting was held in London on 14 November 2017. In attendance were representatives of the SHC and its legal advisors, and Mifsud Bonnici Advocates and RSM Malta on behalf of the Government. The SHC indicated that the interactions with the Government intensified in the period leading to the acquisition by the SHC of the shares in Bluestone Investments Malta Ltd. According to the SHC, the reasons for Government's involvement in what would otherwise be a private transaction between two private entities were twofold. First, the SHC required the Government's clearance in terms of its role as the granting authority and the broker of the deal. Second, the Government brokered the deal on the basis that the concession would be restructured to make it bankable. The PS MOT confirmed that the Government was represented by Mifsud Bonnici Advocates and RSM Malta in meetings held with the SHC wherein commercial aspects of the concession were discussed. According to the PS MOT, no records of these meetings were retained by the Government.

2.1.21 The SHC informed the NAO of other meetings held. These were held in London on 22 November 2017 and on 30 January 2018, in Malta on 2 December 2017 and 6 December 2017, and in Boston on 15 February 2018. Queried as to who was present for these meetings, the SHC indicated that the Government was generally represented by the Minister for Tourism, the Chief of Staff OPM, and Mifsud Bonnici Advocates and RSM Malta. According to the SHC, the Minister for Health attended the meeting held in Boston. As regards the SHC, it was represented by the CEO SHC International, other officials and the company's legal counsel.

2.1.22 Although the SHC did not provide records of these meetings, it indicated that the key theme discussed was the conditions under which the concession could be assumed by the SHC. The understanding was that the Government, on the SHC taking over, would allow the SHC to renegotiate the concession agreements directly and propose changes, especially aspects that were not bankable or financeable. The SHC's understanding, given that the Government requested it to act within a limited timeframe, was that a full and proper due diligence exercise of the concession would only be possible once it was taken over.

2.1.23 That stated by the SHC was corroborated by the Partner RSM Malta, engaged as a representative of the Government in its initial discussions with the SHC. In response to queries raised by the NAO, the Partner RSM Malta informed this Office that in November 2017, he was requested to participate in an initial meeting with the SHC by the MOT. According to the Partner RSM Malta, the SHC had expressed interest in the concession, and it was in this context that he was briefed to learn more about the SHC's intentions. The Partner RSM Malta confirmed that meetings were held around mid-November 2017 in London and were attended by a representative of Mifsud Bonnici Advocates and himself, in representation of the Government, and the CEO SHC International, assisted by others, on behalf of the SHC. During these meetings, the Government's general policy on healthcare-related PPPs and the desired outcomes of the concession were discussed. On their part, the SHC representatives advised that they would consider investing in the project, contingent on agreement being reached with the VGH. The Partner RSM Malta noted that the Government's representatives had clarified that the Government's approval would be necessary.

2.1.24 Of interest to the NAO was correspondence provided by the SHC that allowed for glimpses into the context of the concession towards the end of 2017 and the attempts being made for the replacement of the VGH. The earliest email thread reviewed by the NAO was that dated between 17 and 21 November 2017, wherein internal correspondence exchanged among SHC officials captured the Government's request for information required by it to compile a due diligence of the SHC. Of note was the correspondence submitted by the CEO SHC International to the company's legal advisor on 21 November 2017, wherein it was stated that the situation concerning the concession in Malta was escalating and that the Government intended to meet with the Director VGH to terminate its relations with the Concessionaire and threaten criminal action. Also noted was that the CEO SHC International had, on that day, met with a construction company to discuss the feasibility of building the medical school by summer 2018.

2.1.25 In submissions to the NAO, the Director VGH indicated that between November and December 2017, the SHC made a presentation to the Government with the intention to take over the concession. The Director VGH claimed that, following this presentation, he was forced to transfer the shares of the VGH under duress despite him having no intention to do so. Moreover, he contended that this duress forced him to leave Malta. The Director VGH indicated his willingness to disclose further information subject to sufficient legal safeguards being provided, which safeguards were not within the powers of this Office. In this context, the Director VGH was reluctant to elaborate on the nature of and who exerted the duress. No evidence substantiating that alleged was provided by the Director VGH to this Office. In terms of interactions between the VGH and the SHC, following the Government's decision to transfer the concession, the Director VGH referred to several meetings held in December 2017. The meetings were held in Malta and in London and were attended by the Director VGH, the CEO SHC International and the parties' legal representatives. The Director VGH emphasised that he agreed to these meetings under duress.

2.1.26 On 4 December 2017, correspondence was exchanged between the legal advisors of the SHC and Mifsud Bonnici Advocates, acting on behalf of the MOT. The subject of the exchange was an MoU under discussion by the parties. In essence, the MoU set out certain terms and conditions on and subject to which the parties were willing to enter into, proceed with and implement the proposed transaction. According to the MoU, the proposed transaction was defined as the SHC's interest in assisting the Government in implementing the concession and the Government's willingness to assist the SHC with this process. The MoU was to serve as the basis for drafting and negotiating legally binding agreements required for the proposed transaction. Moreover, each party committed to work with the other party in good faith and in the spirit of cooperation and collaboration to complete the proposed transaction in a structured, focused and timely manner. Noted by the NAO in the correspondence dated 4 December 2017 was reference to the extent of liability to be assumed by the Government, whose role was described by Mifsud Bonnici Advocates as that of facilitator between the VGH and the SHC. Furthermore, since the Government and the SHC were acting in good faith to make the transaction work, Mifsud Bonnici Advocates contended that it should suffice that the Government committed to endeavour towards this goal.

2.1.27 The NAO enquired with the PS MOT and the SHC as to whether the MoU was entered into. The PS MOT indicated to the NAO that, based on information made available to him, the Government was not actively considering entry into the MoU. Elaborating in this regard, the PS MOT noted that some early discussions were held on the terms proposed; however, the SHC did not insist on its signing. The PS MOT stated that he had no knowledge whether the document was signed.

2.1.28 Other correspondence made available to the NAO by the SHC was that dated 12 December 2017, exchanged internally by the SHC's legal advisors. Citing information received from the CEO SHC International, the SHC legal advisors noted that the Government had requested the SHC to take over the concession. According to the correspondence, the SHC was willing to assume control of the concession despite that its legal advisors had not yet completed their due diligence review. The SHC legal advisors questioned on what basis the SHC would be willing to take over the concession and whether any warranties were required. Of interest was that the SHC legal advisors stated that unless the SHC was willing to take over the concession – understood by the NAO as imparting a sense of urgency for the SHC's legal advisors could not conclude their due diligence review – the Government indicated that it would terminate the concession and the SHC would lose its lead position.

2.1.29 On 20 December 2017, the CEO SHC International submitted correspondence to the Chief of Staff OPM and the SHC legal advisor. Clarifying the SHC's position, the CEO SHC International indicated that the SHC had foregone undertaking due diligence for several reasons, one of which was the pressing timeline. This implied that the SHC would not pursue any pre-purchase due diligence, including in relation to shareholder loans. Expressing concern, the CEO SHC International noted that this situation was an impossible position for the SHC to be in.

2.1.30 Aside from the views of the CEO SHC International, the NAO obtained the perspective of other SHC officials, in particular the President SHC Malta and the General Counsel SHC International, in relation to the developments that occurred towards the end of 2017. The President SHC Malta indicated that her role at the time was that of CEO GGH and that she had no visibility of the impending changes. Some insight was provided by the General Counsel SHC International despite him not having any ties with the SHC at the time. The General Counsel SHC International highlighted the importance of the setting under which the SHC came into the transaction and maintained that the SHC was assured that the failings of the concession would be amended to allow for a fresh start.

2.1.31 Elaborating in this respect, the General Counsel SHC International maintained that the concession had, till then, completely failed. Despite it being awarded in 2015, by 2018 all major milestones remained pending. The General Counsel SHC International asserted that the SHC, a renowned international hospital operator, would only have assumed the concession on the understanding that matters would be amended to render the concession workable and one that the SHC would be able to run. This understanding was derived from discussions with the Government held towards the end of 2017.

2.1.32 In support of this argument, the General Counsel SHC International referred to the report issued in connection with the Eurostat excessive deficit procedure (EDP) dialogue visit to Malta between 31 May and 1 June 2018. He argued that this public record captured the Government's commitment to amend and restructure the concession to render it workable.

2.1.33 Central to the NAO's enquiries with the SHC, particularly as the NAO's attempts at understanding how the change of control of the concession originated remained unresolved due to divergencies, ambiguities and conflicts in accounts of how this came about, was that reported in a local newspaper in February 2022. In a newspaper article published on 7 February 2022, the President SHC Malta claimed that it was the Government who had approached the SHC to take over the VGH concession which, at the time in 2018, "was in a state of dire emergency." According to the President SHC Malta, as reported, "it is no secret that VGH, under the tight control of its owners, had not delivered on its obligations, nor had the Government demanded they do so. Not only that, there were also no funds left for the salaries of medical and non-medical staff working at the hospitals. This was unknown to VGH's own management teams at the time, who were not allowed any visibility of the financial situation by the owners."

2.1.34 Further clarifications with respect to that stated by the President SHC Malta, regarding the Government approaching the SHC to take over the concession, were sought by the NAO. During a meeting with this Office, the President SHC Malta stated that this was based on third-hand knowledge since she was not involved in and had no visibility over the process of takeover given her role at the time as CEO GGH. Nonetheless, from an operational perspective, the President SHC Malta indicated that towards the end of 2017, she was very concerned that funds were extremely low, insufficient to the extent that the hospital was unable to procure even basic supplies.

2.1.35 According to the SHC, as reported in the newspaper article, Government gave the SHC "a mere two weeks to agree to take on the responsibilities of the concession and ensure doctors, nurses, cleaners and everyone else whose livelihoods depended on VGH could get their salaries paid. This came with a commitment, to the SHC and to the wider community (including the European Commission), that the terms of the deal would be renegotiated to make the concession viable." This sense of urgency was evident in correspondence submitted by the SHC, reported on in the preceding paragraphs.

2.1.36 The NAO sought to understand the mindset of the SHC when agreeing to take over the concession given the restricted timeframe imposed by the Government and the several significant unknowns that characterised the VGH. Queried as to whether the SHC had sufficient information to make an informed decision at that stage, the General Counsel SHC International acknowledged that the company did not have enough information. However, the SHC emphasised that the Government had warranted that information would be forthcoming and, more importantly, that the concession would be restructured as necessary. Pressed to indicate who had made these assurances on behalf of the Government, the SHC identified several ministers and senior officials. Although all those indicated were involved in discussions between the Government and the SHC at some stage, the only Government representatives whose role at this early phase of interaction is evidenced by documentation were the Minister for Tourism and the Chief of Staff OPM.

2.1.37 Reacting to that stated by the President SHC Malta in the newspaper article of 7 February 2022, the MFH contested all claims made by the SHC. The MFH maintained that the CEO SHC International and the President SHC Malta occupied senior management roles within the VGH prior to the change of control to the SHC and were therefore also responsible for the foundering of the Concessionaire. The PS MFH objected to the narrative as presented by the President SHC Malta, that she and the CEO SHC International were not aware of the dire financial situation of the VGH, particularly in view that they constituted the senior management of the VGH and were involved in interactions with the MFH on all aspects of the concession. The MFH deemed that asserted by the President SHC Malta as obscene.

2.1.38 Pre-empting developments yet to occur, on 21 December 2017, on one of the social networking platforms, the Prime Minister stated, "Good news that #Steward Healthcare, largest private operator in US, has chosen #Malta for first international investment. All aspects of free health PPP preserved, inc new hospitals, Bart's campus, working conditions. A vote of confidence in Malta by another major US firm." The Minister for Health was also reported to have commented on the transfer of the concession in an article dated 21 December 2017, wherein he indicated that a deal between the VGH and the SHC was signed on 20 December 2017 and that the Government had already met the chairperson of the new company.

2.1.39 The NAO sought to establish whether there was any other media coverage regarding the Government's perspective on the transfer of the VGH concession, in particular who made the initial contact with the SHC. The only direct reference as to how the SHC were approached was that reported in a local newspaper when commenting on the Prime Minister's testimony during legal proceedings instituted by the former Leader of the Opposition, the Hon. Adrian Delia (hereinafter referred to as the Leader of the Opposition), in 2018. According to the Leader of the Opposition, the Government had no right to authorise the transfer of the concession, given that the VGH did not meet its obligations and requested the Court to cancel the VGH contract. The Leader of the Opposition maintained that, under the agreement, the VGH only had the right to assign their obligations to other parties after three years from the fulfilment of the milestones associated with the completion of works on the sites. He further argued that there could be no authorisation of the transfer to third parties and therefore the hospitals contract was to be rescinded. In media coverage of the Court session held on 18 January 2021, it was reported that "[the Prime Minister] could not recall who had approached Steward Healthcare to take over the concession agreement when VGH faced financial difficulties. He insisted a new clause negotiated with the American company that made Government responsible for all the debt if the contract was rescinded by the Court was needed as a guarantee to protect a local bank."

2.1.40 The Minister for Tourism was also to testify in the Court proceedings; however, he opted not to respond to questions put to him. He maintained that he would not answer since other magisterial inquiries he was involved in were still to be concluded.

2.2 Request to transfer shareholding in Vitals Global Healthcare Ltd

2.2.1 According to documentation submitted by the PS MOT, on 27 December 2017, the Director VGH for and on behalf of the VGH Group requested the Minister for Tourism to, on behalf of Government, provide his irrevocable and unconditional consent, acceptance and approval to the sale by Bluestone Investments Malta Ltd of shares in issue in VGH Ltd to SHC International Ltd. On the same day, a similar request was made to MIP Ltd, wherein approval for the sale of the shares was again sought.

2.2.2 Other correspondence was submitted by the Director VGH for and on behalf of the VGH Group to the Minister for Tourism on 27 December 2017. Reference was made to the conditional share sale and purchase agreement entered into between Bluestone Investments Malta Ltd and SHC International Ltd and to the obligation of the VGH Group to provide a fully executed copy of the Financing Agreements by 31 December 2017. The VGH requested the Government to extend the deadline to 5 March 2018, or to one month post the expiry of the conditional share sale and purchase agreement.

2.2.3 Requested to indicate what action was taken by the Government on the receipt of the request by the VGH Group for the transfer of its shares, the PS MOT asserted that the transfer was discussed and approved at Cabinet level. In addition, the PS MOT informed the NAO that a due diligence report was commissioned on SHC System LLC, the company that was to acquire the shares of VGH Ltd. A copy of the due diligence report was submitted.

2.3 Due diligence report

2.3.1 An 'Enhanced Due Diligence – Business Bespoke Report' on SHC System LLC was prepared by C6 Intelligence Information Systems (hereinafter referred to as C6), an international provider of data intelligence focusing on third-party and anti-corruption risk, anti-money laundering and Know Your Customer due diligence and monitoring, among others. According to the report, this was prepared for the local legal firm Mifsud Bonnici Advocates in line with their request dated 17 November 2017. The due diligence report was dated 1 December 2017.

Company information

2.3.2 According to the due diligence report, SHC System LLC was a limited liability company registered in Massachusetts, United States of America (USA) on 5 July 2010 with its headquarters in Boston, Massachusetts. SHC System LLC was formerly known as Caritas Christi Health Care System Inc. and changed its name in November 2010 when it was acquired by the private equity firm Cerberus Capital Management and converted into a for-profit company. Caritas Christi Health Care System Inc. was a non-profit subsidiary of the Archdiocese of Boston, USA.

2.3.3 The Asset Purchase Agreement between Caritas Christi Health Care System Inc. and SHC System LLC was signed on 19 March 2010. The latter commenced its principal operations on 6 November

2010, when it acquired the business, assets, and operations of Caritas Christi Health Care System Inc. According to the Consolidated Financial Statements of SHC System LLC for the year ended 30 September 2011, the company was a controlled affiliate of Cerberus Capital Management LP, which acted as its financial sponsor and guarantor through its other controlled affiliate, SHC Holdings LLC.

2.3.4 As of 30 September 2011, there were 100 common membership interests authorised and outstanding and all of the SHC System Inc.'s outstanding common membership interests were held by SHC Holdings LLC. SHC Holdings LLC was registered on 15 June 2011, while Cerberus Capital Management LP was registered on 13 April 1993.

2.3.5 Cited in the due diligence report was that, according to the firm brochure submitted by Cerberus Capital Management to the US Securities and Exchange Commission[2] on 17 March 2017, Mr Stephen Feinberg was the principal owner of the company. Searches of the UK Companies House[3] records of the UK affiliates of Cerberus Capital Management further identified Mr Feinberg as the owner of more than 75 per cent of the company shares. In October 2016, SHC System LLC completed a $1.25 billion (€1.05 billion) real estate sale-leaseback transaction with Medical Properties Trust Inc.,[4] transferring to the Trust the real estate assets of nine Steward community hospitals, together with the right of first refusal to acquire the next $1 billion (€843.7 million) of Steward's future hospital acquisitions. In September 2017, Medical Properties Trust Inc. invested another $1.4 billion (€1.18 billion) to acquire the real estate interests of eleven IASIS[5] hospitals now operated by SHC. In addition, Medical Properties Trust Inc. acquired $150 million (€126.5 million) in equity interests of SHC System.

2.3.6 In September 2017, SHC System LLC completed a merger with IASIS Healthcare LLC supported by a $1.4 billion (€1.18 billion) investment by Medical Properties Trust Inc. As the sole operator of the newly merged company, SHC System LLC became the largest private hospital operator in the USA. It oversaw 35 individual hospitals across several states in the USA and had projected revenues of almost $8 billion (€6.7 billion) in 2018, the first full year of the consolidated company.

2.3.7 As reported in the due diligence report, subsidiaries of SHC System LLC include the following entities which operate in several states of the USA:

a. Steward Hospital Holdings LLC (also known as Steward Hospitals), operator of 35 hospitals, and incorporated on 14 April 2010;

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2 The Securities and Exchange Commission is an independent federal agency in the USA, established pursuant to the Securities Exchange Act of 1934. The Commission oversees securities exchanges, securities brokers and dealers, investment advisors, and mutual funds in an effort to promote fair dealing, the disclosure of important market information, and to prevent fraud.

3 Companies House is an executive agency, sponsored by the Department for Business, Energy and Industrial Strategy of the United Kingdom. Inter alia, Companies House incorporates and dissolves limited companies, and registers company information and makes it available to the public.

4 Medical Properties Trust Inc., founded in 2003 and based in Alabama, USA, is a real estate investment trust specialising in healthcare facilities and trades on the New York Stock Exchange.

5 IASIS Healthcare, located in Tennessee, USA, was the for-profit owner and operator of medium-sized acute care hospitals in high-growth urban and suburban markets. IASIS owned or leased 17 acute care hospital facilities and one behavioural health hospital facility.

b. Steward Medical Group Inc., with a network of over 1,000 physicians directly employed in the system, and incorporated on 2 June 2010;

c. SHC Network Inc., which provides health care services to over two million patients annually, and incorporated on 16 July 2010;

d. Steward Medical Group Express Care Inc. (also known as Steward Urgent Care), which operates 30 affiliated urgent and express care locations, and incorporated on 23 April 2014;

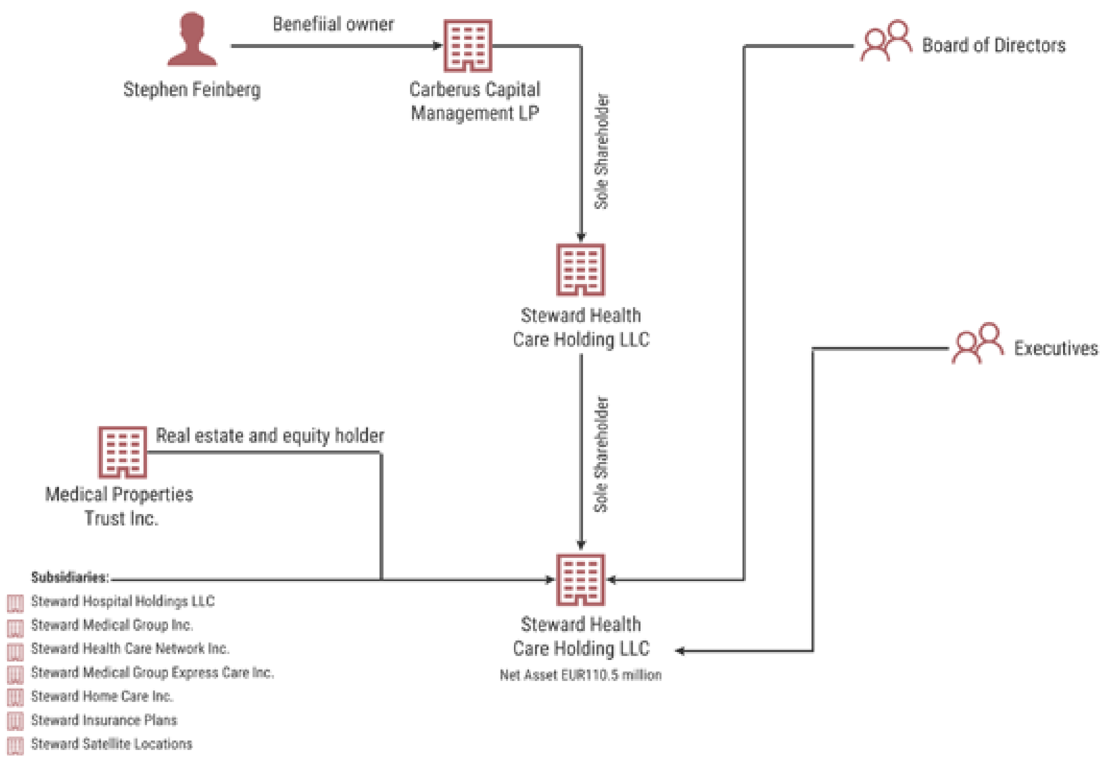
e. Steward Home Care Inc. (also known as Steward Home Care and Hospice), which provides home care, private care and hospice services to Steward patients, and incorporated on 15 July 2010;

f. Steward Insurance Plans, which provides insurance plans, most notably Steward Health Choice, which covers over 500,000 lives in the two USA states of Arizona and Utah; and

g. several satellite locations that provide medical facilities in Massachusetts.

2.3.8 A relationship map outlining the above company structure and identifying the ultimate beneficial owner (UBO) as Mr Stephen Feinberg is presented in Figure 1.

Figure 1 | Steward Health Care System LLC and subsidiaries relationship map



(Source [adapted] | C6 – Enhanced Due Diligence: Business Bespoke Report)

Note:
Names presented under 'Board of Directors' and 'Executives' together with a corresponding indication as to whether adverse media or court/legal matters arise in relation thereto, or if politically exposed persons, have been redacted.

2.3.9 According to shareholder data on SHC System LLC, as reported in the due diligence report, the company was owned by Cerberus Capital Management, SHC Holdings LLC, and Medical Properties Trust Inc. (Figure 2 refers).

Figure 2 | Shareholding structure - Steward Health Care System LLC

Type	Datapoint
UBO	Stephen Feinberg
Significant direct shareholders (>25 per cent)	Cerberus Capital Management LP
	SHC Holdings LLC
Other shareholders	Medical Properties Trust Inc.

Financials

2.3.10 Financial data on SHC System LLC was also reviewed in the due diligence carried out. As reported therein, according to a 2015 report by the Massachusetts Attorney General's Office on Steward's financial performance and compliance with certain provisions of the Asset Purchase Agreement between Caritas Christi and Steward, the financial condition of Steward had declined since 2012. Steward's Audited Consolidated Financial Statements from financial year 2012 to financial year 2014 showed consecutive years of substantial losses, according to the report. In the fourth fiscal year of operations (financial year 2014), operating expenses continued to increase faster than revenues, resulting in a decline of the operating margin as net losses increased. The total net loss reported by Steward for financial year 2014 was $78.4 million (€66.1 million). The report found that in the period between financial year 2012 and financial year 2014, Steward increased its reliance on long-term debt financing and that its obligations related to its pension plans continued to be one of the system's largest liabilities, increasing to $368 million (€310 million) by December 2014. However, the negative trend reversed in financial year 2015, when Steward posted approximately $2.2 billion (€1.8 billion) of revenue, prompting an upgrade in Moody's Corporate Family Ratings rating to B2.

2.3.11 Stated in the due diligence report was that information on hospital systems' financial performance published by the Massachusetts state agency Centre for Health Information and Analysis (CHIA) revealed that SHC System LLC reported a profit of $116 million (€97.9 million) in financial year 2015, with net assets totalling $131 million (€110.5 million). For financial year 2016, Steward reported to the CHIA $2.2 billion (€1.8 billion) in operating revenue and $131 million (€110.5 million) in net assets. According to an article by a non-profit investigative journal of politics, ideas and civic life dated 10 January 2017 and citing figures submitted to the CHIA, Steward's revenues had steadily increased, while losses had narrowed. Revenues had grown from $1.6 billion (€1.3billion) in 2011 to nearly $2.2 billion (€1.8 billion) in 2015, according to the filings. Searches of corporate registries and state health agencies did not provide access to recent annual financial reports and consolidated financial statements of Steward. The only publicly available consolidated financial statements were for the fiscal year ending 30 September 2011. The CHIA state agency reported that Steward's eight hospitals failed to submit the required quarterly financial data in time for the then most recent report covering the period up to 30 June 2017.

2.3.12 Figure 3 and Figure 4 present the financial data, retrieved 'as is' from the Massachusetts Office of the Attorney General 2015 reports on SHC System LLC.

Figure 3 | System Financial (Financial year 2012 - Financial year 2014)

(Amounts in thousands)	FY 2012	FY 2013	FY2014
Net patient service revenue (less bad debt)	$1,678,068	$1,756,248	$1,845,908
Operating income (loss)	($22,198)	($54,991)	($75,002)
Net loss	($33,053)	($51,958)	($78,357)
Operating margin	-11%	-2.6%	-3.5%
Current ratio	0.99	0.93	0.79
Days cash on hand	9.95	6.49	2.25
Cash balances	$52,182	$36,514	$13,046

Figure 4 | Financial Condition (Financial year 2012 - Financial year 2014)

(Amounts in millions)	FY2012	FY2013	FY2014
Long-term debt	$326.4	$407.8	$413.3
Equity	$21.3	$64.1	($185.4)
Assets	$1,246.2	$1,276.6	$1,219.6

Risk factors

2.3.13 Several key datapoints relating to potential risks were covered in the due diligence report. The risk factors identified were:

a. political exposure;

b. terrorism;

c. sanctions;

d. insolvency/bankruptcy/disqualified director;

e. law enforcement/financial regulators/courts;

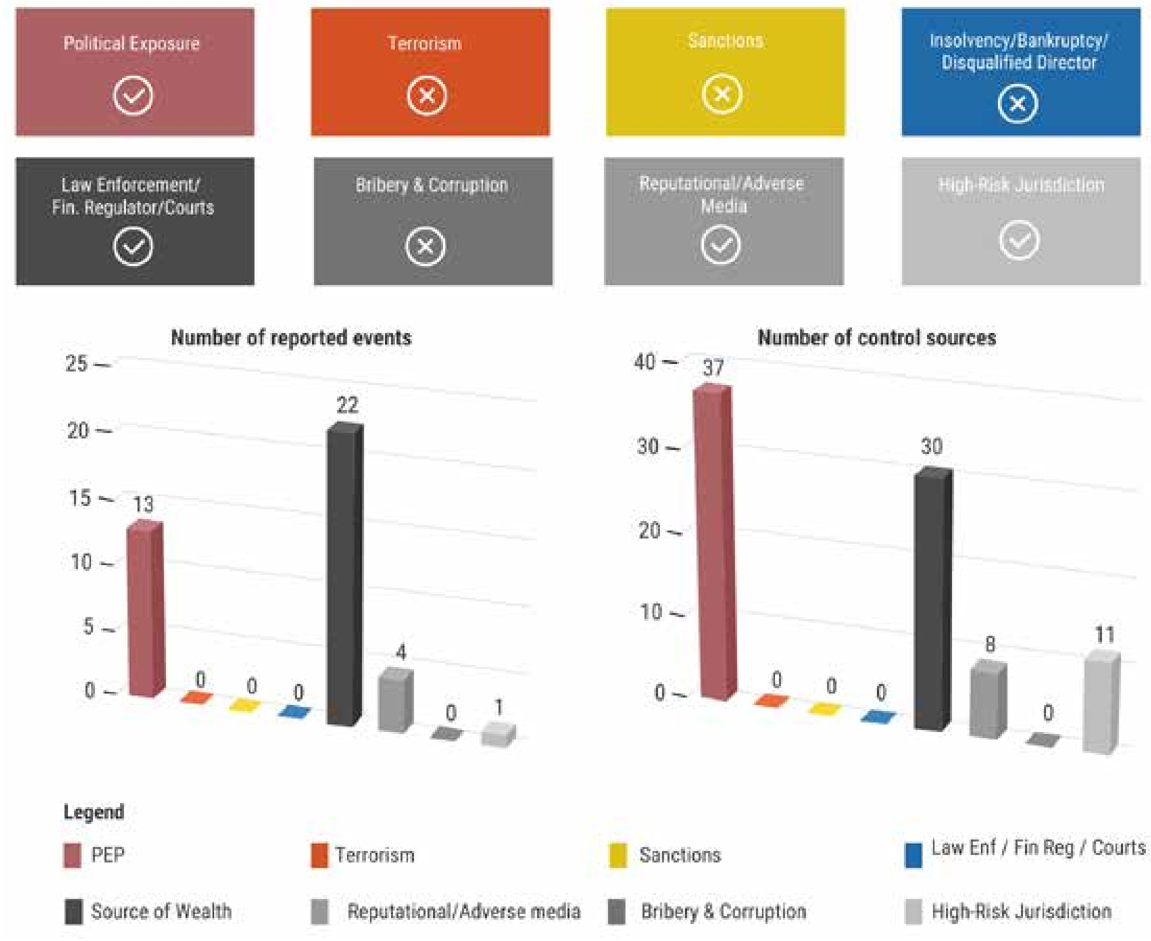
f. bribery and corruption;

g. reputational/adverse media; and

h. high-risk jurisdiction.

2.3.14 Possible breaches by SHC System LLC in terms of the above datapoints were assessed through the number of reported events encountered in several publicly available control sources reviewed by C6. The risk matrix illustrated in Figure 5 presents a summary of the findings. The graphical representation indicates whether a record was found against any of the key datapoints cited above. The two bar graphs indicate the number of reported events and control sources, respectively.

Figure 5 | Risk matrix - Steward Health Care System LLC



(Source | C6 – Enhanced Due Diligence: Business Bespoke Report)

2.3.15 A summary of reported events and the number of control sources accessed is given in Figure 6.

Figure 6 | Reported events and control sources - Steward Health Care System LLC

Risk category	Data available	Remarks: reported events and control sources
Politically Exposed Persons (PEPs)	yes	• 4 findings related to political exposure known capacity • 9 findings related to political exposure by association • 37 control sources
Terrorism	no	no match
Sanctions/Restrictive measures	no	no match
Insolvency/Bankruptcy/ Disqualified director	no	no match
Law enforcement/Financial regulator/Court and legal	yes	• 6 litigation findings related to the subject company • 16 litigation findings related to two of the company directors • 30 control sources
Reputational issues/Adverse media	yes	• 3 findings related to the subject company • 1 finding related to a company director • 8 control sources
Bribery and corruption	no	no match
Jurisdiction risk	yes	• 1 finding related to the Financial Action Task Force (FATF) recommendations • 11 control sources

2.3.16 As reported in the due diligence report, the data provider conducted a multilingual web search on SHC System LLC using the name and any known variation of the name and other individual identifiers of the company. The search was particularly focused on adverse media as well as crimes such as fraud, corruption, and terrorism. The media sources used included local and international newspapers, as well as reputable online databases and news sources. Cited therein were the following categories of data:

a. global compliance and regulatory indices and restrictive watchlists, such as data provided by the US Central Intelligence Agency, the International Criminal Police Organisation, the US Federal Bureau of Investigation and national wanted lists;

b. international and unilateral sanctions, inclusive of but not limited to the sanction lists issued by the European Union (EU), United Nations, the US Office of Foreign Assets Control-Specially Designated Nationals, the UK Treasury, Australia's Department of Foreign Affairs and Trade, as well as other national sanctions enforced locally;

c. governmental and other public authorities' websites covering all levels of PEPs;

d. extensive web search facilities and multilingual media research of global, national, and local sources;

e. industry and other commercial/specialist sources, where applicable;

f. corporate registry databases, where available; and

g. the data provider's database on PEPs, sanctions, and adverse media.

2.3.17 Checks for negative information on SHC System LLC were also conducted against national datasets. The main findings were the following.

Politically exposed persons

2.3.18 The due diligence report provided data on the directors and senior executives of SHC System LLC and its subsidiaries and reported, on a risk-based approach, if PEP-related concerns could be confirmed.

2.3.19 Considerable concerns were raised with respect to several senior executives, considered as PEPs, where C6 was able to independently verify the information sourced. Executives of SHC System LLC or its subsidiaries identified as PEPs included the Chief Operating Officer, the Executive Vice President and Chief Strategy Officer, members of Steward's Board of Directors, the Chief Marketing Officer, the Chief Information Officer (CIO) and Presidents of Steward subsidiaries.

2.3.20 Among the factors cited that rendered the above executives as PEPs were:

a. close ties to the political class, including former Presidents of the USA, Governors, members of the Senate, congressmen, and other high-profile politicians;

b. prior employment in senior positions in health-related state or federal agencies with significant budgets and thousands of employees, including:
   i. the Massachusetts Executive Office of Health and Human Services with a budget of over $19 billion (€16 billion), 15 state agencies and 22,000 employees;
   ii. Centers for Medicare and Medicaid Services (CMS) at the US Department of Health and Human Services with a budget of $400 billion (€337 billion) for federal Medicare, Medicaid and child health insurance programs, among others;
   iii. the Florida Agency of Healthcare Administration, responsible inter alia for Medicaid and health care industry regulation;
   iv. the National Committee on Vital and Health Statistics, a public advisory board to the US Health and Human Services Secretary on health data strategy and the implementation of the Health Insurance Portability and Accountability Act; and
   v. the Massachusetts Industrial Finance Agency, which is the state's investment bank issuing health care bonds for Massachusetts hospitals;

c. prior posts as advisers or other senior positions to former Presidents and the Treasury Secretary;

d. active support to and involvement in funding political campaigns of prominent politicians, including former Presidents, vice-presidential candidates, senators and congressmen; and

e. contributions of substantial sums as funding to the political campaigns of various candidates.

2.3.21 According to the due diligence report, Mr Stephen Feinberg – the principal owner and UBO of SHC System LLC – could also be considered a PEP by association due to his close ties to a former US President and his administration. An article by an American weekly news magazine, dated 4 May 2017, qualified Mr Feinberg as a member of "[the President's] billionaire boys club" and the "unofficial adviser on the intelligence community". According to the article, Mr Feinberg was photographed with the President and the Secretary of Defence. In another article published by an online provider of financial news and data on 15 February 2017, it was reported that Mr Feinberg was the President's campaign adviser and in February 2017 was considered for the position of Intelligence Chief with the President's Cabinet. Citing a US daily newspaper, the article further revealed that Mr Feinberg had donated substantial sums to a presidential candidate's campaign. Mr Feinberg's close ties to prominent politicians extended to the senior leadership of his firm Cerberus Capital Management, which included a former US Vice-President and a former Treasury Secretary. Further on, the article attested that Mr Feinberg's firm Cerberus Capital Management owned a private military contractor that provided security services to government agencies and obtained the majority of its revenues from the US Government.

Issues relating to law enforcement, financial regulation and litigation

2.3.22 Searches of US legal databases found several court cases where some of the SHC System LLC's directors were defendants. On 21 November 2013, a member on the company's Board of Directors was listed as a defendant in a civil lawsuit, seen by the US District Court of Hawaii. Other defendants in the case were SHC System and Steward Holy Family Hospital. The case involved a personal injury claim for the plaintiff's mother who died in Steward Holy Family Hospital. The court concluded that it lacked personal jurisdiction over the defendants and ordered a transfer of the venue to the District of Massachusetts. On 24 September 2014, the US District Court of Massachusetts dismissed the complaint.

2.3.23 Searches of US court sources indicated that SHC System LLC or its affiliates were listed as the defendant in another five cases. Claims made by plaintiffs were damages for the destruction of a cancer research laboratory, discrimination due to disability, leave on medical grounds, unlawful termination of employment, and breaches in a contract entered by Steward with an association of doctors resulting in losses to the latter.

2.3.24 According to the due diligence report, one of the members of SHC System LLC's Board of Directors was listed as one of the defendants in several other court cases. Nonetheless, these were all associated with positions held in companies other than Steward.

2.3.25 Regarding compliance and regulatory information compliance, regulatory database searches were conducted by C6 using SHC System LLC's identifiers. Following leads by media reports on the company's non-compliance with the requirements of the state agency CHIA to submit timely financial information and the ensuing fines, specific searches were conducted with the purpose to uncover the original agency's statements and fine orders. No relevant information was found on the websites of the state agencies CHIA and the Massachusetts Health Policy Commission. Nonetheless, alleged infringements by Steward are reported under the section relating to reputational issues and adverse media.

Reputational issues and adverse media

2.3.26 As reported in the due diligence report, an extensive open-source intelligence (OSINT) investigation was conducted with a focus on adverse media reports concerning SHC System LLC. Most of the negative media articles concerned the company's failure to submit timely financial data to the CHIA. According to an article in a Boston daily newspaper published on 31 October 2017, Steward was the only company that has repeatedly failed to submit companywide financial statements to the state of Massachusetts. As a result, Steward had amassed more than $300,000 (€253,000) in fines for its lack of transparency, which it had not paid as of 31 October 2017. According to the article, in October 2017, Steward filed a lawsuit against the CHIA, arguing that the state agency had no right to demand sensitive and proprietary information about the company, and make it publicly available. The company's failure to report financial information to the CHIA and the pending fines of $1,000 (€844) per week of delay had received wide media coverage between 2015 and 2017.

2.3.27 Another article by the same newspaper, dated 1 September 2017, described a controversy based on the lack of transparency with another state agency, the Massachusetts Health Policy Commission.[6] According to the article, SHC System LLC had not officially notified the state about its plans involving two significant transactions: the pending acquisition of 18 hospitals outside of Massachusetts owned by IASIS Healthcare and the purchase of eight hospitals from Community Health Systems Inc.

2.3.28 On 17 March 2015, an article by an industry's (health) business newspaper reported on the negative financial results of SHC System LLC for the preceding three years. According to the article, citing data disclosed by Steward to the CHIA, the company had posted an eight-figure loss for a third year in a row. The reported losses for 2011, 2012 and 2013 were $59 million (€49.8 million), $33 million (€27.8 million), and $52 million (€43.8 million), respectively.

2.3.29 Regarding other adverse media, the due diligence report indicated that, according to an article published by a global media company on 15 February 2017, Mr Stephen Feinberg had received negative media coverage related to his firm Cerberus Capital Management's investment into a gunmaker firm that manufactured the weapon used in the 2012 shooting in an elementary school in Connecticut, USA.

[6] The Massachusetts Health Policy Commission is an independent state agency charged with monitoring health care spending growth in Massachusetts and providing data-driven policy recommendations regarding health care delivery and payment system reform.

Jurisdiction corruption risks

2.3.30 According to Transparency International's 2016 Corruption Perceptions Index, the USA ranked 18 (out of 175 countries) and its score was 74 (where scores range from 0 (highly corrupt) to 100 (very clean)), which classified the country as fairly clean.

2.3.31 Freedom in the World Survey of Freedom House, which provides an annual evaluation of the progress and decline of freedom in 195 countries and 15 related and disputed territories, gave the USA the status of 'Free' in 2016. The country received a score of one for freedom rating, one for civil liberties and one for political rights (on a scale from one to seven, where a rating of one indicates the highest degree of freedom and seven the lowest level of freedom). However, the USA also received a downward trend arrow because of flaws in the electoral system, an increase in the use of private money in election campaigns, a lack of government openness, and new evidence of racial discrimination in the criminal justice system.

2.3.32 Despite that one finding relating to jurisdiction corruption risks was identified in the summary of reported events, no details were found in the due diligence report except that this related to recommendations made by the FATF.

Other risks

2.3.33 No risks were identified by C6 in its due diligence report regarding terrorism, sanctions and restrictive measures, issues related to insolvency, bankruptcy or disqualified director, and bribery and corruption that implicated SHC System LLC. Despite database searches using the company's identifiers, no relevant information was identified.

2.3.34 Although not strictly related to other risks, an extensive OSINT investigation was conducted on the source of wealth of Mr Stephen Feinberg as UBO of SHC System LLC. Mr Feinberg is an American private equity investor based in New York, whose wealth is mainly generated from the returns of his investments. He is the co-founder and CEO of Cerberus Capital Management, one of the largest investment firms in the USA, with business lines in private equity, distressed debt, hedge funds, and real estate, and managing over $30 billion (€25.3 billion) in assets. According to Forbes World's Billionaires ranking, Mr Feinberg's net worth as of 21 November 2017 was $1.54 billion (€1.29 billion), placing him at 1,678th place in Forbes ranking. According to an article by an American weekly news magazine, dated 4 May 2017, Mr Feinberg's wealth was estimated at $1.2 billion (€1.01 billion). The article gave account of Mr Feinberg's two main residences – a $50 million (€42.2 million) Manhattan townhouse and a 2,500-square-foot home in Connecticut, USA. As regards his firm Cerberus Capital Management LP, the article revealed that it had assets of $120 billion (€101.2 billion) and stakes in at least 50 companies, including a grocery store chain, car rental companies, a global fast-food chain, and an airline, and $1 billion (€843.7 million) in a defence contracting company. In addition, Cerberus was a former owner of an American multinational automotive manufacturing company and profited from the taxpayer-funded bailout of the auto industry. Another testament to Mr Feinberg's wealth was his ownership of a private 800-acre military site outside Memphis, Tennessee USA, called Tier 1, which had shooting ranges, on-road and off-road driving courses, and a parachute drop-zone, as well as an "urban-combat compound" designed to look like an Afghan village. Since 2008, the Tier 1 facilities served as a training ground for US Navy Seals and Marine Special Operations.

Sourcing and clearance of the due diligence report

2.3.35 The NAO sought to obtain an understanding of how the request to C6 originated, particularly since this was made on 17 November 2017, well before the request for the transfer of the VGH shares to the SHC was made to the Government. More specifically, the NAO sought to establish who engaged Mifsud Bonnici Advocates to carry out the due diligence exercise that was eventually sub-contracted to C6, when they were engaged, how they were selected, their terms of reference and the costs incurred. Supporting documentation in this respect was also requested. Queries to this end were directed towards the MOT.

2.3.36 The PS MOT informed this Office that Mifsud Bonnici Advocates were asked by the Ministry to obtain a third-party service provider enhanced due diligence report on SHC System LLC on or around 10 November 2017. Elaborating in this respect, the PS MOT indicated that this assignment was part of the firm's overall legal support to the Ministry and therefore undertaken at no additional cost. Furthermore, the PS MOT noted that no specific terms of reference were set other than the obtaining of an industry-standard due diligence report from a reputable risk and compliance firm, which request the C6 report fulfilled. The NAO deemed the fact that the due diligence undertaken by C6 – commissioned by Mifsud Bonnici Advocates on behalf of the MOT – did not result in a cost to Government as anomalous.

2.3.37 The NAO enquired with the Prime Minister whether he was aware of the outcome of the due diligence report and whether he had any connection with the persons or interests identified in relation to the SHC. The Prime Minister informed the NAO that, as a general rule, he did not review due diligence reports and relied on the outcome of such reports as relayed to him. Notwithstanding this, the Prime Minister informally consulted with the American Government, that gave a glowing endorsement of the SHC. As regards whether the Prime Minister had any connections with the SHC, he categorically denied this and indicated that the only person he knew was the CEO SHC International, given that he previously occupied the post of CEO VGH.

2.4 Approval by the Government

2.4.1 Approval for the transfer of the shares held by Bluestone Investments Malta Ltd in VGH Ltd to SHC International Ltd was granted on behalf of the Government by the Minister for Tourism on 29 December 2017. Approval by the CEO MIP Ltd was granted on 3 January 2018, wherein reference to the correspondence dated 27 December 2017 and to the emphyteutical deed entered into between MIP Ltd and VGH Assets Ltd on 22 March 2016 was made. Through this deed, VGH Assets Ltd was granted by title of temporary emphyteusis the sites at the GGH, the KGRH and the SLH. MIP Ltd granted its consent for and approved the transfer of the shares held by Bluestone Investments Malta Ltd in VGH Ltd, the latter being the then shareholder of VGH Assets Ltd, to SHC International Ltd.

2.4.2 The NAO noted that both approvals for the transfer of the shares were made shortly after the request by the VGH, raising serious concerns as to whether such a crucial decision was taken by the Minister for Tourism and MIP Ltd without consultation with Cabinet and/or other ministries or entities of the Government. Supporting this Office's concerns was documentation made available, through which the NAO established that the matter was only discussed in Cabinet on 9 January 2018, days after the approval of the Minister for Tourism was granted. Given the significance of this approval, the consequences that could ensue from the transfer of the shares, and the other options that were available to the Government, it was crucial for the NAO to establish the facts leading to the Government's sanction of the transfer.

2.4.3 Cabinet documents reviewed by the NAO indicated that developments regarding the transfer of the concession, albeit indirect, were first registered in a meeting held on 19 December 2017. Reported in this respect was that the Prime Minister informed Cabinet that there existed the possibility of positive developments in connection with the hospitals' concession. Direct reference to the transfer of the concession was brought to the attention of Ministers during the Cabinet meeting of 9 January 2018. During this meeting, the Prime Minister referred to the Memorandum '(A) VGH- Consent for Share Transfer; (B) VGH- Extension of Date for Financial Close', prepared by the Minister for Tourism, which was being brought to the urgent attention of Cabinet. According to the excerpts of this Cabinet meeting made available to the NAO, the Prime Minister alluded to the discussions during the previous Cabinet meeting and expounded on the reasons that led to the decision to proceed with the transfer of the concession of the GGH, the KGRH and the SLH to the SHC.

2.4.4 The NAO sought to further understand that stated by the Prime Minister in his reference to discussions previously held by Cabinet, particularly during the sitting of 19 December 2017. This was crucial for the NAO to present a complete and impartial account of the reasons motivating Government's endorsement of the transfer of the concession from the VGH to the SHC. To this end, a request was submitted to the Cabinet Office; however, the only record provided in relation to the meeting held by Cabinet on 19 December 2017 was the succinct extract of the minutes presented in the preceding paragraph.

2.4.5 During the Cabinet meeting held on 9 January 2018, with authorisation already granted to the VGH for the transfer of shares, the Minister for Tourism expounded on the Memorandum relating to the consent sought by the VGH for the transfer of shares and the extension for financial close. The Memorandum was also dated 9 January 2018. Regarding the transfer of shares, the Memorandum indicated that, on 30 November 2015 the Government and the VGH entered into, inter alia, the SCA and the HSDA. Also cited in the Memorandum was that Clause 15.1 of the former and Clause 35 of the latter 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. On 27 December 2017, the Government received a request from the VGH to grant consent for the sale of the entire issued share capital of VGH Ltd to SHC

International Ltd. Based on the information provided by the VGH, the proposed transaction, if approved by the Government, would lead to a change of control of the VGH; hence the consent requirement. Having carefully considered the matter and given that the proposed transaction was time sensitive, the Government, by letter dated 29 December 2017, granted its consent for the eventual transfer of the shares held by Bluestone Investments Malta Ltd in VGH Ltd to SHC International Ltd.

2.4.6 Regarding the extension of the date of financial close, the Minister for Tourism indicated that, pursuant to the SCA, a side letter was executed on 19 May 2016 in terms of which the VGH undertook inter alia to provide the Government with a fully executed copy of the Financing Agreements by 19 February 2017. However, further to a request from the VGH for extension of the longstop date, this date was, by means of a document dated 14 February 2017, extended until 30 June 2017, which date was later further extended, again with the approval of Cabinet, until 31 December 2017. Regarding the reasons for the request for extension, the Minister for Tourism indicated that the ongoing share transfer negotiations between the VGH and the SHC necessitated a further extension of the longstop date and given the time sensitivity of this transaction, the deadline for financial close was extended to 5 March 2018, or to one month post the expiry of the conditional share sale and purchase agreement, whichever was the earliest.

2.4.7 In the Memorandum to Cabinet, the Minister for Tourism requested the Ministers to ratify the extension of the longstop date for financial close, the extended longstop date being 5 March 2018 or one month post the expiry of the conditional share sale and purchase agreement, whichever was the earliest. The Ministers were also to ratify the consent granted by the Government for the eventual transfer of the shares held by Bluestone Investments Malta Ltd in VGH Ltd to SHC International Ltd. The Memorandum was signed by the Minister for Tourism.

2.4.8 According to excerpts of the minutes of the Cabinet meeting held on 9 January 2018, after discussions and clarifications by the Minister for Tourism, the Cabinet approved the Memorandum as proposed.

2.4.9 In view of the fact that Cabinet's endorsement for the transfer of shares was obtained following the approval already granted by the Minister for Tourism, and the lack of involvement of the MFH in what was essentially a health-related concession, the NAO sought the views of key Government stakeholders. When confronted with the fact that the authorisation by the Minister for Tourism preceded the endorsement of Cabinet, the Prime Minister informed the NAO that he was aware of and agreed with the approval that was given. The Prime Minister maintained that consultations were held on the matter prior to the authorisation by Cabinet; however, he asserted that responsibility for the decision was ultimately his and contended that this was the right decision. Notwithstanding this, the Prime Minister indicated that the MFH and MFIN were informed and referred to a tripartite structure that included the MOT. He emphasised that the MFH was the key stakeholder in this concession, that MFIN was involved throughout the entire process and that the MOT's role was one of project management; however, the Prime Minister acknowledged that ownership over the project shifted over time.

2.4.10 A contrasting perspective was put forward by the Minister for Health, who maintained that the MFH was not involved in the approval granted by the Government for the transfer of the shares and therefore the change of control of the concession from the VGH to the SHC. The Minister for Health asserted that responsibility for this aspect of the concession rested with the MOT. Elaborating in this respect, the Minister for Health emphasised that the MFH was not bypassed in this process and was not involved owing to the internal organisation of the Government in its management of this concession. The Minister for Health argued that testament to this was the fact that the Government's consent for the change of control was signed by the Minister for Tourism. The MFH corroborated that stated by the Minister for Health, maintaining that the Ministry became aware of the change of control through the media.

2.4.11 Attempts to source the views of MFIN proved to no avail for queries addressed to the PS MFIN in August 2022 remained unaddressed.

2.4.12 Enquiries were also made with the MIP Ltd, later restructured as INDIS Malta Ltd, in view of the approval given regarding the transfer of the title of the sites. The NAO sought to establish whether the MIP Ltd consulted with Government prior to the granting of its approval and in the affirmative, who did it consult with, when, and what was discussed. If approval was granted without consultation with the Government, the NAO enquired as to what was the rationale behind MIP Ltd unilaterally assuming the responsibility for such a crucial decision. In response, INDIS Malta Ltd notified this Office that no record of the rationale underlying such approval could be traced.

2.4.13 Given the many difficulties that the VGH was encountering in implementing that contracted, the NAO enquired whether the Government considered aborting the concession instead of consenting to the transfer of the VGH shares to the SHC. The Prime Minister acknowledged that there were problems with the concession and that all options were considered; however, no impact assessment regarding this course of action was undertaken by the Government. Elaborating on this matter, the Prime Minister shifted focus onto the resistance that existed in respect of the private sector management of the health system, citing vested interests and lack of accountability as key factors. According to the Prime Minister, the performance targets that were to be set by the private sector management were to impinge on certain persons and interests with substantial social and economic influence. The Prime Minister emphasised the need for a delineation between the management and the operation of public health services, which services ought to be structured around the patients' needs to ensure value for money. It was in this context that the Prime Minister argued that value for money could be obtained through the private sector management of public health services. Another point raised by the Prime Minister related to the financing of the capital investment required, wherein he argued that the Government did not have the necessary funds to undertake the required works at the sites and it was in this respect that the involvement of the private sector was required. Finally, the Prime Minister referred to the relevance of the Barts Medical School in providing education and highlighted this component as an integral element of the PPP.

2.4.14 Enquiries regarding the Government's possible consideration of aborting the concession were directed to the Minister for Health by the NAO. The Minister for Health indicated that the Government did not consider aborting the concession and stated that it was too early in the term to consider such a course of action. In turn, the MFH asserted that the Ministry was not involved in any capacity during the phase of the concession within which control shifted from the VGH to the SHC and therefore maintained that no contribution in respect of the possible aborting of the concession was made by the Ministry.

2.4.15 The acquisition of the concession was formally announced by SHC System LLC on 20 February 2018 wherein, according to a statement issued, it had "finalised a public-private partnership to deliver exceptional health … and was now the Government of Malta's health care partner and will run a number of public medical facilities in the country." According to the Chair and CEO, SHC System LLC was to invest in the medical facilities entrusted to it, upgrading them into state-of-the-art hospitals. In addition, "Steward's innovative care model has successfully helped patients across the United States receive high-quality care while reducing medical expenses and … we look forward to implementing this new model of exceptional care in Malta."

2.4.16 The announcement by SHC System LLC also referred to that stated by the Maltese Prime Minister on the transfer of the concession to the SHC. Citing the announcement verbatim, "SHC shares our same vision for the future of healthcare in Malta, said Prime Minister Dr Joseph Muscat. Our resolve to upgrade Malta and Gozo's healthcare services to world-class levels has been given a further boost through this partnership. With its impressive track-record, Steward is the ideal partner to realise such a critical infrastructural upgrade of our hospitals while offering the best medical services to patients."

2.4.17 According to the announcement, "through the public-private partnership that resulted from Steward's purchase of Vitals Global Healthcare's concessions to run the facilities entrusted to it, Steward will also construct and run campus facilities for Barts and the London School of Medicine and Dentistry, and offer Steward hospitals as teaching facilities for medical students. Steward intends to invest in these facilities so that they stay and thrive in Malta. … Steward has achieved extraordinary results in the United States, by pioneering a new model for care that rewards doctors and nurses for keeping patients healthy and close to home. … We look forward to bringing this model, and Steward's innovative technology, to the people of Malta so they receive world-class care that remains free." The statement by SHC System LLC concluded that "Steward has built some of the most innovative health care technologies in the United States, which have been at the heart of the company's success in improving care for patients. These technology-enabled platforms help to predict diseases and illnesses before they spread, reduce excess time a patient spends in the hospital, and leverage analytics to help administrators plan appropriate staffing levels. Steward also utilizes state-of-the-art electronic medical records and electronic intensive care units across its system. The company intends to deploy these technologies in Malta." The NAO noted that, in the statement issued at the time of the takeover, no mention was made by either the SHC or the Prime Minister of the difficulties that the hospitals were facing nor of the fact that it was the Government who had approached the SHC and proposed the takeover of the VGH concession.

2.5 Other developments prior to the change of control

2.5.1 The NAO sought to establish what developments were taking place in the interim, that is, between the approval for the transfer of shares granted by the Government to the VGH on 29 December 2017 and the actual transfer to the SHC on 15 February 2018. This period, much like that preceding the 29 December 2017 endorsement by the Government and reported in Section 2.1 of this report, was critical in that key discussions were held and decisions relating to the change of control were taken at this stage.

2.5.2 The NAO's visibility over the Government's role and actions in this respect remained obscured, a situation mainly attributable to the limited information provided to this Office by the Government officials involved in critical interactions with the VGH and the SHC. The Prime Minister and the Chief of Staff OPM were frugal in their submissions to the NAO. The Prime Minister argued that responsibility for discussions rested with the ministers concerned, in line with his belief in delegation, and that his role was that of endorsing, or otherwise, decisions reached. On the other hand, the Chief of Staff OPM did not provide any insight into his involvement other than reiterating that he acted in his official capacity. As regards the Minister for Tourism, his refusal to cooperate with the NAO limited this Office in establishing his involvement at this critical juncture.

2.5.3 An element of understanding of what was happening during this period was obtained through correspondence exchanged at the time and provided to the NAO by the SHC. Of interest was an email dated 26 January 2018, wherein the CEO SHC International informed the Minister for Tourism of the actions that Government was to take to allow for the conclusion of its deal with the Government prior to entry into the Sale and Purchase Agreement with the VGH.

2.5.4 According to the correspondence submitted, the Director VGH had encumbered the entire shareholding of the VGH with a guarantee provided to the construction contractor to enable the payment of the performance bond. The CEO SHC International maintained that the guarantee could only be lifted by the Government and that this was required for the sale of the shares to be possible. The SHC committed to replace the performance bond within a few weeks. The CEO SHC International stated that it was not possible to immediately replace the performance bond because funds could not be transferred into the VGH prior to the Sale and Purchase Agreement. Moreover, the SHC were distrustful of the Director VGH should any funds be transferred prior and could not relay €9,000,000 on short notice and without a concluded deal. Given the tight timeframe, the SHC sought a temporary and conditional release of the performance bond by the Government.

2.5.5 Another matter addressed in the correspondence dated 26 January 2018 was the SHC's need for a 'standstill' agreement with the Government, whereby the parties would agree to adjust a few essential aspects of the concession agreements and that this would be done in a reasonable period of time; however, instead of effecting these adjustments prior to closing, these adjustments would be made afterwards. The CEO SHC International noted that otherwise, the SHC would acquire a company that was immediately in default on numerous fronts, milestones and timelines.

2.5.6 Finally, the CEO SHC International referred to the fact that since there were no management accounts and it was unlikely that there would be closing accounts and a balance sheet at the time of entry into the Sale and Purchase Agreement, the Government was requested to allow a deferral on the payment of taxes for a few months, during which period the SHC would update and audit the Concessionaire's financial records. The SHC committed to settle all of the Concessionaire's liabilities on closing, including tax dues.

2.5.7 Another thread of email correspondence was provided by the SHC to the NAO. On 27 January 2018, the CEO SHC International submitted correspondence to the Chief of Staff OPM, Mr Shaukat Ali and Mr Asad Ali regarding the SHC's proposals to complete the transfer of shares and provided an explanation on certain aspects of negotiation. The CEO SHC International highlighted several important issues that required resolution prior to the transfer of shares. Noted in this respect was the need to replace the performance bond so that there was no lapse for the Government and the sourcing of crucial documents from the VGH who remained unable to provide proper closing accounts. The pendency of these matters was attributed by the CEO SHC International to the lack of competence, experience, resources and lack of external counsel on the part of the VGH. Of interest to the NAO was that the CEO SHC International acknowledged that in a more normal transaction, the SHC would have required four to six weeks more to conclude; however, conceded that this was not possible in the current scenario. Also of note was that the CEO SHC International stated that the SHC had no opportunity to finalise the required assessments and that this ought to be seen within the context of a seller who could not warrant his business.

2.5.8 To address the pending matters, the CEO SHC International proposed several points of action. First, the SHC would issue a performance guarantee in the form of a letter issued by the company itself rather than a bank. Cited as justification in this regard was the company's anticipated revenue for 2018 estimated at $8,000,000,000 and the inevitable delay arising from the regulatory environment of banks were one to request such a guarantee. The Government was requested to confirm whether this arrangement was satisfactory. Second, the SHC highlighted the entirely unknown extent of the 'corporate' (emphasis placed by the SHC) liabilities that it was to assume and stated that these were likely to be approximately €3,000,000. However, the SHC simultaneously emphasised that it had no reliable manner to ascertain the extent of the liabilities due. To resolve this concern, the SHC proposed that the Government would protect it from liabilities exceeding the €3,000,000 threshold. Third, the CEO SHC International indicated that several important parts of the contracts would need to be left open and resolved at a later stage, as would the establishing of accounts. The CEO SHC International noted that the SHC would withhold part of the initial €2,500,000 payment to the Director VGH until these issues were addressed. The SHC anticipated the risk of other adverse issues coming to light; however, resolved to address these matters as they arose.

2.5.9 While seeking consent as to the way forward to allow for closing, the CEO SHC International stated that this was the most shambolic situation that he had ever encountered and hoped that the parties would put the PPP back on track. As a final note addressed directly to the Chief of Staff OPM, the CEO SHC International indicated that the Minister for Health had contacted him for an update. While the CEO SHC International noted that he had not disclosed any information, he needed to revert to the Minister for Health and therefore had sought the comments of the Chief of Staff OPM.

2.5.10 The above correspondence was referred by the CEO SHC International to the company's legal advisor. Noted in this referral was that the SHC did not want to wait, hence the submission to the Chief of Staff OPM.

2.5.11 In its review of the correspondence submitted by the CEO SHC International to the Chief of Staff OPM on 27 January 2018, the NAO noted the inclusion of Mr Shaukat Ali and Mr Asad Ali and sought to establish an understanding as to their involvement. In submissions made to this Office, the Director VGH indicated that when the concession was awarded to the VGH in 2015, Mr Shaukat Ali was employed as a general consultant to the VGH following a recommendation by the Chief of Staff OPM. According to the Director VGH, Mr Shaukat Ali then recommended his son to the VGH, Mr Asad Ali, who was employed as a public relations and marketing consultant by the VGH. It is pertinent to note that Mr Shaukat Ali was a signatory to the MoU entered into on 10 October 2014 by the Government and the developers and operators of a project that bore significant similarities to the concession that would eventually be awarded to the VGH. Aside from the similarities in the nature of the project, the NAO established that there existed significant overlap between the investors that entered into the MoU with Government and the owners of the VGH. The overlap in terms of the nature of the project and the identity of the investors strongly supported this Office's understanding that the issuance of the RfP, and therefore the subsequent award of the concession, was orchestrated to deceive. The NAO's concerns regarding the integrity of this concession resonate with the ample press coverage alleging the substantial payments that Mr Shaukat Ali, Mr Asad Ali and other family members, directly and through companies that they were involved in, reportedly received from the VGH and the SHC. The central role of the Chief of Staff OPM, as highlighted by the Director VGH, would aggravate these concerns.

2.5.12 On 15 February 2018, the SHC legal advisor submitted correspondence to the Chief of Staff OPM in anticipation of the imminent completion of the transaction. In copy were the CEO SHC International, several representatives of the SHC legal advisory firm, the Minister for Tourism and representatives of Mifsud Bonnici Advocates. For the SHC to complete the transaction, certain assurances were sought from the Government in the form of an assurance letter and confirmation in relation to tax matters. Also noted was that the performance bond for the construction contractor was not lifted and was to be addressed post-completion. Therefore, the SHC contended that no guarantee was to be provided by it to Government at this stage.

2.5.13 In the preceding paragraphs, reference was made to the several instances when the Chief of Staff OPM was the recipient of emails relating to the change of control of the concession. Often, the Chief of Staff OPM was the sole Government representative involved in such correspondence. With this knowledge, the NAO requested the Chief of Staff OPM to provide this Office with any correspondence in his possession. Despite requests made, no information was forthcoming.

2.6 Transfer of shares

2.6.1 Matters came to a close on 15 February 2018 when the CEO SHC International submitted correspondence to the Government, for the attention of the Minister for Tourism, wherein the proposed completion of the acquisition of the VGH Group and associated matters were raised. In the letter, reference was made to the concession agreements, namely, the SCA, the HSDA, the LSA, the Emphyteutical Deed and the various side letters to the SCA relating to the GGH, the KGRH, and the SLH. Reference was also made to the Sale and Purchase Agreement dated 21 December 2017 between SHC International Ltd and Bluestone Investments Malta Ltd under which the former would acquire VGH Ltd and its related subsidiaries, that is, VGH Assets Ltd, VGH Management Ltd and VGH Resources Ltd. Also cited by the SHC was correspondence from the Government dated 29 December 2017 approving the acquisition of the shares and other correspondence, also dated 29 December 2017, whereby the Government agreed to extend the deadline for the submission of the financing agreements.

2.6.2 The NAO sought to obtain a copy of the Sale and Purchase Agreement referred to in the correspondence submitted by SHC International Ltd to the Minister for Tourism. A request to this effect was made to the PS MOT. This Office was informed that the MOT was not in possession of the Sale and Purchase Agreement since it was not a party to the Agreement and was not involved in its drafting and negotiation.

2.6.3 In submissions to the NAO, the Director VGH reiterated that he did not want to transfer the concession and alleged that he did so under duress. The Director VGH maintained that he was pressured to transfer the shares in the VGH to the SHC for a nominal fee of €1. According to the Director VGH, at the time, the VGH was valued at €210,000,000. The NAO noted that the Director VGH made no reference to other payments received from the SHC, aside from the nominal fee, arising from the sale of the shares.

2.6.4 In its correspondence of 15 February 2018, the SHC noted that, with a view to enable the completion of its acquisition of VGH Ltd and its subsidiaries and to further ensure that it was able to register progress in the implementation of the concession agreements, the SHC indicated that it was of the understanding that the Government would:

a. work with the SHC's transition and implementation team to identify the critical works and services under the concession agreements to ensure that the Concessionaire is fully aligned with the priorities and requirements of the Government;

b. work collaboratively with the SHC to ensure that the timelines, deliverables and other terms of the concession agreements are efficiently implemented, with such necessary changes as may be agreed in terms of the SCA, to meet the Government's objectives and requirements; and

c. use its reasonable endeavours to procure that any necessary third party would execute and deliver such documents and perform such acts as may reasonably be required in connection with the matters set out in this letter or to give full effect to the SHC's acquisition of VGH Ltd and its subsidiaries referred to earlier.

2.6.5 The SHC also indicated that it further understood that the Government confirmed the completion of the acquisition of VGH Ltd and its related subsidiaries under the Sale and Purchase Agreement and that the receipt of another letter issued by the SHC, also dated 15 February 2018 and attached to this correspondence, satisfied the concessionaire's obligations to finance the concession under the contractual agreements and the financing extension letter. The Government was requested to confirm its approval to the above by signing and returning the letter to the SHC. Concluding the correspondence was that the SHC appreciated the opportunity to work with the Government on a matter of such national importance and committed to implement the projects collaboratively in the spirit of a true PPP.

2.6.6 The Government acceded to that requested by the SHC through its correspondence of 15 February 2018 and agreed to the terms therein. The Government's consent was signed by the Minister for Tourism; however, this was undated.

2.6.7 The NAO noted that the attached correspondence referred to in the letter submitted by the SHC on 15 February 2018 related to the financing of the concession and associated matters. In the attached correspondence, also dated 15 February 2018, the SHC again referred to the contractual framework relating to the GGH, the KGRH and the SLH and further indicated that it was in the process of acquiring the shares in the relevant VGH companies cited in paragraph 2.6.1. Reference was also made to a letter from the Government dated 29 December 2017 approving the acquisition of the VGH shares by the SHC and to other correspondence, also dated 29 December 2017, whereby the Government extended the deadline for the submission of the financing agreements. Regarding the financing of the concession, the SHC indicated that it was part of a group whose annual revenue was approximately $8,000,000,000. The SHC confirmed that it would be able to finance its own obligations and those of the concessionaire companies under the concession agreements through the SHC group's resources and relationships.

2.6.8 The NAO sought to obtain a better understanding of what the Government had agreed to when endorsing the requests made by the SHC in its initial correspondence dated 15 February 2018. According to the PS MOT, while the Government and the SHC did not enter into an agreement specifically to renegotiate the contractual framework, in its countersigning of this correspondence the Government committed to assist the SHC to ensure a smooth transition and to work collaboratively to achieve or improve on the project's objectives. On the other hand, the SHC's understanding of the Government's acknowledgement of this letter extended beyond assistance and collaboration, for the letter referred to the implementation of necessary changes as may be agreed by the parties in terms of the SCA. Hence, according to the SHC, the Government's endorsement of this letter signified its willingness to engage in negotiations to restructure the concession.

2.6.9 In the Cabinet meeting held on 19 February 2018, the Prime Minister informed Cabinet that the transfer of the shares from the VGH to the SHC was made that day, and that all matters relating to the transfer of the shares would be concluded by the next day.

2.6.10 Records held at the MBR show that Bluestone Investments Malta Ltd transferred its 1,200 shares in VGH Ltd on 16 February 2018. Of the shareholding, 1,140 shares were assigned to SHC International Ltd, while 60 shares were transferred to Dr Ashok Rattehalli. The assignment of shares to the latter was in line with an agreement dated 12 May 2015 entered into between Dr Rattehalli and Bluestone Investments Malta Ltd. The transfer of the entire shareholding of VGH Ltd was registered by the MBR on 19 February 2018.

2.7 The Leader of the Opposition institutes legal action

2.7.1 On 19 February 2018, the Leader of the Opposition, in his capacity as a Member of Parliament, submitted a writ of summons to the First Hall of the Civil Court against the Prime Minister, the Attorney General, the CEO MIP Ltd, VGH Assets Ltd, VGH Ltd, VGH Management Ltd, the CEO Lands Authority and the Chair of the Board of Governors of the Lands Authority, calling for the annulment of the temporary emphyteusis of the sites at the GGH, the KGRH and the SLH, and for these hospitals to be returned to Government. Stated in the writ was that the properties had been transferred to the Concessionaire on the premise that these are utilised to fulfil the obligations stipulated in the concession agreements; however, the Concessionaire had failed to achieve the concession milestones stipulated in the SCA. In view of this failure, the Leader of the Opposition contended that the VGH did not have the right to transfer its shares to the SHC, as the SCA stipulated that the Concessionaire only assumed the right to transfer its obligations as from three years from the fulfilment of completion milestones. Notwithstanding this, the Government had granted its authorisation for the transfer of the shares. The Leader of the Opposition maintained that he had initiated this judicial action by reason of his duty as a Member of Parliament to protect public property as per Chapter 573 of the Laws of Malta. The presiding judge was the Hon. Dr Silvio Meli, who was succeeded by the Hon. Dr Francesco Depasquale on the former's retirement in April 2019.

2.7.2 The Court heard the oral testimonies and reviewed the written submissions of various witnesses, including representatives of MIP Ltd, Projects Malta Ltd, the Lands Authority, the MFSA, the members of the Evaluation and Adjudication Committee tasked with the appraisal of the tenders, the Planning Authority (PA), the MAM and the GGH, as well as the Leader of the Opposition, the Auditor General, the Attorney General, the VGH, the Principal Permanent Secretary, the PS MFIN, the Minister for Finance, the Prime Minister, the PS MOT, the Minister for Tourism, the Minister for Health and a representative of the Clerk of the House.

2.7.3 On 24 February 2023, the Court rescinded and annulled the Emphyteutical Deed, the SCA, the HSDA and the LSA and all amendments thereto. In its judgement, the Court deemed that the VGH was awarded the concession as a result of manipulation and lies solely intended to corrupt the thought and evaluation of those responsible for this choice and decision, which manipulation led to the sole gain of the VGH, later the SHC, to the detriment of the Government. In addition, the Court noted that given that the contractual obligations and milestones were not achieved by the VGH, the Government was obligated not to accept any transfer of shares to the SHC and instead request the recission of the contracts based on non-adherence by the VGH. The Court indicated that the Government and the authorities involved had the obligation and duty to rescind all contracts in view of the manipulation and fraudulent actions systematically undertaken by the VGH and the SHC. As a result, the Court ordered the return of the GGH, the KGRH and the SLH to the Government.

2.7.4 Following judgement, Steward Malta Assets Ltd, Steward Malta Management Ltd and Steward Malta Ltd filed an appeal on 15 March 2023 to revoke the Court's ruling. In their submission, the appellants argued that the ruling was replete with failings that were procedural and substantive in nature, and further alleged a flawed appraisal and a superficial analysis of facts. In addition, the appellants claimed that the decision was objectively unjust, possibly unconstitutional, and raised doubt as to its validity in terms of EU legislation. In view of this, the appellants also submitted an appeal with the European Court of Justice.

Chapter 3| On failed attempts at revisiting the contractual framework

3.0.1 The first developments of note following the transfer of shares of VGH Ltd from Bluestone Investments Malta Ltd to SHC International Ltd on 15 February 2018 related to the preparation of groundwork for the forthcoming discussions between the parties, particularly through the identification of aspects of the concession that warranted negotiation. However, prior to delving into the process of negotiation, a caveat on the NAO's reporting is warranted. The active nature of that being audited constrains the Office in its reporting in several respects. Primarily, the NAO deemed it critical that possible negotiations between the parties are not compromised by this Office's divulging of commercially sensitive information, more so when this information remained in flux since negotiations were in abeyance.

3.0.2 The Minister for Health and the MFH expressed the importance of adopting a cautious approach in the disclosure of information relating to developments that were still unfolding. This stemmed from concerns that the Government's interests in a process of active negotiation could be compromised and that discussions between the parties could be hindered.

3.0.3 These concerns were also reflected in observations made by the SHC, who contended that several aspects of the negotiations and discussions were private in nature and at times covered by legal privilege. For this reason, a granular account of progress registered could not be provided; however, the SHC conceded that at a high-level of analysis there were several attempts to renegotiate the concession. Information provided by the SHC and the Government stakeholders involved in these attempts is presented in the ensuing sections.

3.1 A false dawn

3.1.1 The earliest record of negotiations following the transfer of shares made available to the NAO was internal correspondence by the SHC. On 14 March 2018, several emails were exchanged between the CEO SHC International and the company's legal advisor regarding the start of discussions with the Government on the amendments and variations required in respect of the concession and how this process was to be documented. A proposed agenda for a planned meeting in Malta scheduled for 22 and 23 March 2018 was also outlined. The key agenda items comprised an introduction to the project and its status and the identification of key stakeholders, namely, Government, the VGH, key contractors and sub-contractors, unions and other interested parties. Another item on the agenda was the project documents, relating to the concession, employment, real estate, sub-contracts and financing, among others. Noted by the SHC in this respect was that the discussion was to focus on what the parties sought to amend and the implications arising therefrom, how the negotiation process was to proceed and whether a timetable was to be set.

The other items on the agenda comprised the construction process and stakeholders, site visits and other matters.

3.1.2 Insight into the approach that the SHC was to adopt in its negotiations of the concession with the Government was obtained by the NAO in its review of subsequent exchanges to that captured in the preceding paragraph. The CEO SHC International emphasised that negotiations were to be comprehensive and once only, and were to include other aspects besides construction, such as key performance indicators (KPIs), the issue of bankability, service lines to be introduced, the proportion of public-funded versus international patient beds, and the LSA. Acknowledged as very important was the renegotiation of revenue and payment mechanisms. Reference was also made to the construction element of the project, with emphasis placed on the completion of the medical school in view of the assurances given to the Government. The SHC legal advisors indicated that a list of matters warranting discussion in the negotiation process was to be submitted to the Government in anticipation of the meeting. While the SHC confirmed that the meeting scheduled for 22 and 23 March 2018 was held, no record of this meeting was retrieved. Nonetheless, the SHC emphasised that meetings between the parties were held on an almost daily basis during this period.

3.1.3 In submissions to the NAO, the MFH indicated that the Ministry's first interaction with the SHC was in a meeting held shortly after the February 2018 change of control. The meeting was intended to explore a workable concession agreement. The MFH noted that the SHC sought to render the concession bankable, while the Ministry's primary objective was the address of issues flagged by Eurostat in its classification of the concession as on-government balance sheet due to the imbalance in the risks and rewards of the project between the Concessionaire and the Government, steeply skewed against the latter. Other concerns highlighted by the MFH related to the performance guarantee, financing, insurances and ambiguities arising in connection with the LSA.

A Eurostat excessive deficit procedure dialogue visit to Malta

3.1.4 Of interest to the NAO was the Eurostat EDP dialogue visit to Malta between 31 May 2018 and 1 June 2018. The Final Findings report in connection with this visit was published by Eurostat on 1 October 2018. Noted in the report was that Eurostat undertook this visit to review the implementation of the methodology of the European System of National and Regional Accounts 2010 and the Manual for Government Deficit and Debt and to ensure that Eurostat decisions were duly implemented in the Maltese EDP statistics. Several matters were to be discussed during this visit, including the PPP on the management of hospitals with the VGH/SHC International.

3.1.5 As stated in the Eurostat report, the scope of the PPP between government and the VGH entered into towards the end of 2015 was the redevelopment, maintenance, management and operation of the GGH, the KGRH and the SLH. The redevelopment was to include the construction of a new hospital and the redesign and remodelling of the existing building at the GGH, the construction and outfitting of a medical school, the construction of a research and development centre and of a nursing university institution. Before the visit, the National Statistics Office (NSO) had informed Eurostat that the initial investment by the VGH was to be €220,000,000. In terms of the PPP, the Government was to purchase the healthcare services that were to be provided by the VGH throughout the 30-year concession. Beds, facilities and services capacity not reserved for use by the Government could be offered by the VGH for medical tourism.

3.1.6 In March 2017, the NSO claimed that a final statistical assessment of this agreement was not possible, pending further information from the relevant authorities. The NSO explained to Eurostat that the construction of the Barts Medical School commenced in early 2017, while in 2016 some renovation and refurbishment works were carried out. In 2016, the Government paid the VGH €16,000,000, whereas in Quarter (Q) 1 2017 the Government paid an additional €5,700,000. In January 2018, the NSO notified Eurostat that discussions of a take-over by the US group SHC from the current shareholders VGH were under way.

3.1.7 Noted in the report was that prior to the visit by Eurostat, no major capital expenditure had yet been incurred on the project. Eurostat further indicated that it had not received the complete copies of the agreements and had only access to the heavily redacted version made publicly available.

3.1.8 In discussions held with Eurostat, the representative of the VGH and the PS MFH presented the broad features of the concession agreements and explained that new agreements were being negotiated following the acquisition of the VGH's shareholding by the SHC. The contracts were expected to remain unchanged in terms of the operational obligations of the concessionaire; however, other elements, such as financing and the Government's obligation to buy minimum levels of service, were under discussion. The VGH confirmed that minimal gross fixed capital formation expenditure took place in 2017.

3.1.9 According to the report, the NSO informed Eurostat that it had analysed the complete agreements and referred to two elements that, each on its own, would lead to an on-government balance sheet recording. First was the presence of a minimum revenue guarantee for the concessionaire and second was Government's commitment to take over in full the concessionaire's debt in case of default. Eurostat also highlighted an issue of high importance visible in the incomplete copies of the contracts made available to it, namely, that the list of force majeure events was open-ended. Based on these elements, Eurostat and the NSO agreed that the PPP should be classified as on-government balance sheet as from the next EDP notification. Furthermore, Eurostat resolved to reassess the new agreements once signed.

3.1.10 In submissions to the NAO, the SHC referred to the 2018 Eurostat Final Findings report as evidence of the Government's commitment to amend and restructure the concession to make it workable. In essence, the SHC understood the Eurostat report as evidence that the concession was to be reassigned and amended by the Government, thereby addressing the fact that it was not classified as a PPP.

3.1.11 Confronted with the Government's commitment to amend and restructure the concession cited by the SHC, the Prime Minister maintained with the NAO that such commitments were not concrete and were to be considered in terms of the prevailing procurement rules and other regulations. He acknowledged that there were discussions wherein the process of change to the concession was explored, yet nothing was pre-agreed.

A proposal to Cabinet

3.1.12 On 5 June 2018, the Hon. Konrad Mizzi, in his capacity as Minister for Tourism, submitted a memorandum to Cabinet titled 'Hospitals Concession – Performance Guarantee'. Cited as context to this memorandum was the Government's consent for the sale of the share capital of VGH Ltd to SHC International Ltd granted on 29 December 2017.

3.1.13 The Minister for Tourism highlighted that the Government had required that changes be made to the concession agreements to ensure that the concession was classified by Eurostat as an off-balance sheet transaction. Additionally noted by the Minister for Tourism was that the MFH had also defined the changes required.

3.1.14 In his memorandum to Cabinet, the Minister for Tourism noted that the SHC had since embarked on an in-depth housekeeping exercise of the obligations it assumed as a result of the acquisition and had requested the Government to concede, for a period of six months commencing on 1 June 2018, that the performance guarantee – held by the Government in warranty of the full and faithful performance of all obligations of the concession agreements – be called only in the event of operational defaults of the contracts, thereby excluding the possibility of call-in during the indicated six-month period in the event of breaches of the construction milestones. The Minister for Tourism envisaged that during this six-month period, agreement would be reached in respect of any changes required to the contract milestones and appropriate legal documentation finalised.

3.1.15 It was in this context that the Minister for Tourism requested Cabinet to authorise the exemption requested by the SHC, such that for the six-month period commencing on 1 June 2018, the performance guarantee would only be called by the Government in the event of operational breaches. This, he argued, would enable the implementation of changes required by the Government.

3.1.16 Recorded in the minutes of the Cabinet meeting held on 5 June 2018 was that the Minister for Tourism brought to the attention of Cabinet a memorandum titled 'Hospitals Concession – Performance Guarantee'. Noted was that the Minister for Tourism had explained that it was necessary to effect changes to the concession agreements to ensure conformity with the classification of Eurostat. The Minister for Health proposed that the Government informally disclose the concession agreements to Eurostat for the latter to clearly indicate the changes that are required. Cabinet agreed with that proposed by the Minister for Health, resolved that leadership of the Project Management Board and the Construction Management Board be transferred to the MFH, and approved the memorandum put forward by the Minister for Tourism.

3.1.17 An element of context to the memorandum put forward to Cabinet was the correspondence submitted by the SHC to the Minister for Tourism on 1 June 2018. In this correspondence, reference was made to the requirement in the SCA for Steward Malta Ltd and Steward Malta Management Ltd to provide the Government with a performance guarantee in the amount of €9,000,000 to secure the due and proper performance of these companies of all obligations to be undertaken in pursuance of the cited Agreement.

3.1.18 Cited in the correspondence was that the SHC irrevocably and unconditionally guaranteed to pay the Government on demand a maximum of €9,000,000 in case any of the payments, performance and other obligations undertaken by Steward Malta Ltd and Steward Malta Management Ltd under or in pursuance of the SCA, including any arbitration award delivered against these companies in favour of the Government, was not duly, properly and punctually paid or performed by them. Further noted was that, although this instrument gave rise to legal relations between the SHC as guarantor and the MOT, Steward Malta Ltd and Steward Malta Management Ltd were not exempt from any obligation or undertaking assumed or given by them under or in pursuance of the SCA. The guarantee was to become effective on 1 June 2018 and expire on 30 December 2018, and unless it was extended or renewed by the SHC or returned to it for cancellation before that date, any demand made by the Ministry for payment was to be received in writing not later than the aforementioned date. Furthermore, the document was to be returned to the SHC for cancellation on utilisation or expiry or in the event the guarantee was no longer required by the MOT.

3.1.19 The NAO sought the MOT's views as to whether the Ministry deemed this correspondence as sufficient assurance that it adequately served the purposes of the performance guarantee as contemplated in the SCA should the SHC become liable to pay dues emanating from non-compliance to the Agreement. This Office also requested the MOT to indicate whether any other supporting documentation, such as a banking confirmation, was sought. According to the PS MOT, the Government had been insisting on a renewed or replaced bank guarantee before and after the original expiry of 31 May 2018. These efforts coincided with attempts made to re-classify the concession with Eurostat as a Government off-balance sheet transaction. However, according to the PS MOT, for such re-classification to be achieved, several changes to the transaction documents would become necessary. It was in this context that the Government had accepted that for, a period of six months, it would not call in the performance guarantee except for operational breaches to allow for discussions with the SHC on the transaction documents. This arrangement was proposed to Cabinet by means of the memorandum dated 5 June 2018, as cited above, and was accordingly approved. According to the PS MOT, this stance was revised in October 2018, when the Minister for Health sought and obtained Cabinet approval for the temporary waiver of the performance guarantee until the end of that year.

3.1.20 An element of corroboration to that stated by the PS MOT was traced in correspondence submitted by the Minister for Tourism to the SHC on 25 June 2018. It is to be noted that a copy of this correspondence was provided to this Office by the SHC. According to the SHC, this constituted evidence of the Government's commitment to renegotiate the terms of the concession. In this regard, the Minister for Tourism had indicated that it was the intention of the Government and the SHC – which both parties acknowledged was required – to seek a number of changes to the concession agreements, such that the agreements reflected the situation pertaining in 2018, put the concession into globally bankable form, and dealt with other practical matters. The Minister for Tourism further indicated that during the six-month period between July 2018 and December 2018, it was expected that all changes to the concession agreements would have been crystallised, agreed on, and all appropriate legal documents – recognising the changes – executed. The Minister for Tourism exhorted that during this period, the SHC – in collaboration with the MFH – was to continue to improve operational shortcomings at the sites. It was to this end that the Minister for Tourism affirmed that the Government agreed and undertook that, during this period of negotiations, it would not call on or enforce any performance guarantee or similar security to be submitted by the SHC. Nonetheless, the SHC was to acknowledge, agree, and remain committed to provide the performance guarantee or similar security during this period pursuant to Clause 14 of the SCA. Appended to the letter submitted by the Minister for Tourism was the endorsement of the SHC.

Government's initial guarantee of financing

3.1.21 While the Minister for Tourism sought Cabinet's approval in relation to the exemption requested by the SHC as captured in the memorandum dated 5 June 2018, the same cannot be said with respect to the Direct Agreement entered into shortly thereafter, through which the Government effectively guaranteed an overdraft facility that the Concessionaire sought to secure. Similar concerns may be expressed with respect to the Security by Title Transfer Agreement, through which Steward Malta Management Ltd assigned rights relating to payments due to it by the Government to the Bank of Valletta plc (BOV) as security. The payments in concern related to the HSDA.

The Direct Agreement

3.1.22 On 22 June 2018, the Government, represented by the Minister for Tourism, Steward Malta Management Ltd, Steward Malta Assets Ltd and Steward Malta Ltd, and the BOV, entered into the Direct Agreement. Referred to in the Direct Agreement was the SCA dated 30 November 2015, as amended by the several addenda and side letters entered into, whereby the Government had granted the concession in favour of the Concessionaire. Reference was also made to the First Sanction Letter dated 8 May 2018, through which the BOV granted an overdraft facility of €5,000,000 to Steward Malta Management Ltd for the purpose of financing the latter's working capital requirements in connection with the operation of the sites in terms of the concession agreement. Noted was that it was a condition precedent to the facility being made available to Steward Malta Management Ltd that the parties enter into the Direct Agreement.

3.1.23 Given that the First Sanction Letter was contingent on Government's entry into the Direct Agreement, the NAO sought to obtain a copy of the Letter and submitted a query to the PS MOT in this respect. The PS MOT informed this Office that the Ministry did not have in its possession the First Sanction Letter granted by the BOV to Steward Malta Management Ltd, for it was not a party to the Letter and was not involved in its drafting and negotiation. The NAO deemed the response anomalous, for the Government bore a contingent liability in respect of the €5,000,000 overdraft facility made available by the BOV to the SHC, and therefore ought to have had access to the First Sanction Letter.

3.1.24 A similar request for access to the First Sanction Letter was made to MFIN. In response, the PS MFIN informed the NAO that the Ministry did not have the requested document.

3.1.25 In the Direct Agreement, the parties acknowledged and confirmed that the BOV was to be considered to fall within the definition of 'lenders' in terms of the SCA and therefore was to benefit from all stipulations made by the Government and the Concessionaire in favour of any 'lenders'. Furthermore, the parties agreed that the obligations of Steward Malta Management Ltd were to fall within the definition of 'lenders' debt' and the First Sanction Letter within that of 'financing agreements' in terms of the SCA. The parties also confirmed that this Agreement was the 'Direct Agreement' as defined in the SCA.

3.1.26 The Government acknowledged its obligations in the instance of the termination of the SCA and the HSDA and the termination payments arising therefrom in accordance with the provisions of the SCA. In this context, the Government confirmed that these obligations and those emanating from the termination and lapse clause of the HSDA were to be due to the BOV until all the obligations of Steward Malta Management Ltd were discharged in full. Further cited was that any payment made in connection with the termination and termination payments clauses in the SCA was to be first made to the BOV to discharge the pending obligations of Steward Malta Management Ltd.

3.1.27 In addition, the parties resolved that the SCA and the HSDA would not be amended in a manner that would materially and adversely affect the BOV's rights as a 'lender' in relation to the 'lenders' debt' and the 'financing agreements', unless prior written consent was obtained from the Bank.

3.1.28 The rights and obligations of Government or Steward Malta Management Ltd were not to be assigned without the prior written consent of the BOV. On the other hand, the BOV could assign, transfer or dispose of any of its rights and/or obligations as it deemed fit, provided that the prior written consent of the Government and Steward Malta Management Ltd was obtained.

3.1.29 The parties agreed that, in the case of any conflict or inconsistency, the Direct Agreement would prevail over the SCA. Finally, stipulated in the Direct Agreement was that it would remain in effect until the earlier of the date of termination of the SCA in accordance with its terms and the date on which Steward Malta Management Ltd irrevocably and unconditionally discharged all its obligations in full.

The Security by Title Transfer Agreement

3.1.30 Also entered into on 22 June 2018 was the Security by Title Transfer Agreement. The parties to this Agreement were Steward Malta Management Ltd, the BOV and the Government, represented by the Minister for Tourism. Reference was made to the First Sanction Letter, which corresponded to an overdraft facility of €5,000,000 made available by the Bank to Steward Malta Management Ltd for reasons cited in paragraph 3.1.22. To secure its obligations under the First Sanction Letter, Steward Malta Management Ltd entered into the Security by Title Transfer Agreement with the BOV, whereby the former assigned the rights to payments due to it by the Government to the Bank as security. The assignment of rights was made in terms of Article 2095F of the Civil Code. The Agreement also regulated the terms and conditions under which the assignment of rights was to take place and subsequently terminated.

3.1.31 Cited in the Security by Title Transfer Agreement was that Steward Malta Management Ltd undertook in favour of the BOV that it would enter into other agreements, as required, to ensure that the security created over the assigned rights and the secured obligations was duly constituted in favour of the Bank and effective.

3.1.32 Steward Malta Management Ltd and the BOV agreed that the latter was to be considered as the absolute owner of the assigned rights and that these rights were not to form part of the patrimony of the former, even after its insolvency. It was also agreed that the Bank was to be considered as having acquired the title and possession of the assigned rights as a fiduciary in terms of the Civil Code. Ownership in this respect was for the purpose of:

a. retaining title and possession of the assigned rights and exercising these rights as security for the performance of the secured obligations;

b. applying such assigned rights in settlement of the secured obligations; and

c. returning the assigned rights after the release date of the secured obligations or returning any excess in value of the rights following a declared default.

3.1.33 Stated in the Security by Title Transfer Agreement was that the BOV was not to be held liable in respect of any obligations or payments relating to the assigned rights. Steward Malta Management Ltd was to indemnify and hold harmless the Bank against all demands made against it, payments made by it, and costs, expenses, damages, losses or other liabilities incurred in respect of any such obligations or payments.

3.1.34 The Government acknowledged and consented to the assignment created through the Security by Title Transfer Agreement and agreed that, until the release date:

a. any and all charges and assigned rights due by it to Steward Malta Management Ltd under the HSDA were to be paid in accordance with the Security by Title Transfer Agreement;

b. no amendment to the HSDA that could materially and adversely affect the BOV's ability to recover the full amount of charges due in terms of the HSDA was to be made unless the Bank's prior consent was obtained; and

c. the right to terminate or assign in any way the HSDA was to be exercised solely by the BOV, to the exclusion of Steward Malta Management Ltd.

3.1.35 Moreover, the Government waived its rights of set-off and other defences which it could have against Steward Malta Management Ltd and accordingly was not entitled to raise any defence against claims made by the BOV with respect to the assigned rights. This waiver and renunciation of rights was made in terms of Article 2095J(3) of the Civil Code.

3.1.36 In terms of the use of the assigned rights, the parties agreed that:

a. all charges due by the Government to Steward Malta Management Ltd in terms of the HSDA were to be due to the BOV and such amounts were to be paid by the Government into a designated bank account maintained by Steward Malta Management Ltd and the Bank;

b. subject to the ensuing sub-clause, all and any other rights as could be exercised by Steward Malta Management Ltd in terms of the HSDA were to be due to the BOV;

c. until the occurrence of a declared default and following such an occurrence, unless written instructions to the contrary were received by the BOV, Steward Malta Management Ltd could continue to deal with the counterparties to the HSDA and exercise all rights arising therefrom other than:
   i. the right to receive the charges from the Government and to judicially enforce payment and the recovery of said charges before a court of law or arbitral tribunal;
   ii. the right to waive or seek reduction of the charges from the Government in accordance with the HSDA and to waive its right to enforce payment and recovery of such charges;
   iii. rights relating to the termination of the HSDA;
   iv. rights relating to the assignment of the HSDA; and

d. Steward Malta Management Ltd was to immediately notify the BOV of any amendment being made to the HSDA or the SCA.

3.1.37 Regarding termination and release, cited in the Security by Title Transfer Agreement was that the parties agreed that the assignment was a continuing security for the due and punctual performance of the obligations arising from the First Sanction Letter. Subject to the terms of this Agreement, the assignment was not to be terminated and re-transferred unless otherwise permitted by the Agreement. Following the full repayment of the obligations arising from the First Sanction Letter, the BOV was to re-transfer the assigned rights to Steward Malta Management Ltd by executing a transfer agreement. Noted was that the re-transfer agreement was not to precede the release date, which date would occur once all secured obligations were performed by Steward Malta Management Ltd in terms of the First Sanction Letter and any allowed clawback period elapsed.

3.1.38 A declared default was to occur under the Security by Title Transfer Agreement on the occurrence of a default in terms of this Agreement or a default under the First Sanction Letter, without the need of any authorisation and/or confirmation from a competent court.

3.1.39 Following the occurrence and during a declared default, the BOV could give notice to Steward Malta Management Ltd to inform it of the declared default. Once such notice is submitted, the Bank would be entitled to:

a. continue to exercise any right competent to Steward Malta Management Ltd under the HSDA; and

b. realise the assigned rights in one of the following methods:
    i. by sale of the assigned rights;
    ii. by the setting off or netting the value of these rights applying such value in discharge of the secured obligations; or
    iii. by the judicial sale of the assigned rights.

3.1.40 The BOV was to indicate the manner through which it intended to realise the assigned rights by means of a written notice submitted to Steward Malta Management Ltd. In the event of a sale of the assigned rights, the value for these rights was to be established in accordance with the provisions of the Civil Code, at the market value of the rights if one exists, or where there was no market value, at a price established by an independent competent person appointed by the BOV to value such rights.

3.1.41 The Government acknowledged that the BOV could sell the assigned rights. Furthermore, the Government accepted that the HSDA could only be dissolved, terminated or rescinded in accordance with the HSDA. Moreover, without prejudice to either party signatory to the HSDA requesting the performance of their respective obligations emanating therefrom, or under law, any other ground for the early dissolution or termination or rescission of the HSDA was excluded.

3.1.42 All payments arising in relation to the assigned rights payable to the BOV in accordance with the Security by Title Transfer Agreement, including the proceeds of the sale of all or any part of the assigned rights, were to be credited to the designated bank account maintained by Steward Malta Management Ltd and the Bank. Amounts received by the BOV were to be applied to the payment of the obligations arising in terms of the First Sanction Letter.

3.1.43 Other matters regulated through the Security by Title Transfer Agreement included provisions relating to negligence in realisations, indemnity, fees and expenses payable in connection with the execution of the Agreement, and the severance and medication of clauses.

The commencement of operational coordination

3.1.44 The earliest evidence of interface between the Government and the SHC at the operational level made available to the NAO by Government was correspondence dated 25 June 2018. Cited in this correspondence, submitted by the PS MOT to the Minister for Tourism, was that a meeting had been held with the SHC earlier that day to initiate clarification meetings on certain aspects of the contracts. The PS MOT requested the Minister for Tourism to endorse the nomination of members to the Clarifications Steering Committee, further details corresponding to which are provided in section 3.3.

3.1.45 The NAO requested the PS MOT to provide additional information relating to the meeting held on 25 June 2018 and to indicate whether other meetings were held, and correspondence exchanged between the MOT and the SHC from February 2018 (when the SHC acquired the VGH) up to July 2018. The PS MOT informed this Office that the meeting held on 25 June 2018 was held together with officials from the MFH and representatives of the SHC to chart a way forward on clarifying certain aspects of the concession. Such clarifications included clauses that were considered as unworkable by the MFH and the determination of the best way forward to ensure that the concession was classified as off-balance sheet. Notwithstanding the correspondence submitted by the Minister for Tourism to the SHC on 25 June 2018 (paragraph 3.1.20 refers), the PS MOT maintained that the Ministry was not involved in any other meetings held and did not correspond with the SHC in the indicated period.

3.1.46 Given the limited visibility of developments that occurred with respect to the concession between February 2018 and July 2018, the NAO sought the views of the MFH on whether the Ministry was involved in any meetings or exchanges with the SHC during this period. In response, the MFH stated that meetings with the Concessionaire were continuous since the commencement of the concession and that the implementation of the relevant agreements presented several issues that warranted attention.

3.2 Steward Health Care's opening gambit

3.2.1 Against the backdrop of the initial interactions between the Government and the SHC, the NAO sought to explore the SHC's understanding of why negotiations were necessary and what elements of the concession warranted revision. In essence, the SHC contended that the concession was not bankable. The General Counsel SHC International explained bankable in terms of a project that has the ability to fund itself through the revenue that it generates. The revenue generated in this respect would be sufficient to meet principal and interest on financing granted to undertake the project and to compensate the concessionaire for the risk taken in assuming the project. The General Counsel SHC International elaborated in this regard, noting that the project finance type for this concession was that of a PPP, which was the basis of its original award. The model of the concession was one where the project would finance itself, with the extent of risk borne by the concessionaire determined through the analysis of several parameters, factors and information that had been provided to enable judgement. In support of this argument, the General Counsel SHC International stated that prior to or when one is awarded a project, one ought to be able to find parties within the banking community interested in its financing. In the case of this concession, the General Counsel SHC International maintained that this project was ill-conceived from the outset in terms of its financials, and this was the reason why no financing was secured when awarded in 2015 and since. It was with this understanding that the SHC justified the need for the restructuring of the concession to make it bankable.

3.2.2 On 26 July 2018, the SHC submitted correspondence to the Government in relation to the GGH, the KGRH and the SLH project, whereby it sought to define the matters subject to discussion in relation to the concession agreements. The letter, signed by Dr Armin Ernst in his capacity as Director for and on behalf of the Concessionaire, was to be brought to the attention of the Minister for Tourism and the Minister for Health. Stated in this correspondence was that SHC International had acquired VGH Ltd (now Steward Malta Ltd) and its subsidiaries on 16 February 2018. Acknowledged in this submission was that SHC Malta, following the completion of the transaction involving VGH Ltd, was working to implement the concession agreements. It was in this context, and in accordance with the Government assurance letter dated 15 February 2018 (elaborated on in section 2.6), the concession agreements and the Agreed Key Principles (details corresponding to which are provided in an ensuing section), that the Concessionaire identified certain matters for discussion with the Government.

The Agreed Key Principles

3.2.3 Appended to the correspondence submitted by the SHC on 26 July 2018 were the Agreed Key Principles, understood by the NAO as a framework arrived at between the parties prior to the submission of this correspondence. Efforts to confirm this understanding proved to no avail as the MFH indicated that it had no information in this regard. Noted in this document was that the Government and the SHC agreed to work collaboratively and individually in the spirit of trust, fairness and mutual cooperation in the fulfilment of the purposes and intent of the principles and any contractual agreements applying between them.

3.2.4 With limited and agreed exceptions, the parties agreed that the doctor workforce at the GGH, the KGRH and the SLH would continue to be employed by the Government. In addition, each of the parties acknowledged that it was the intention of the Government to:

a. deliver and ensure the highest standards of healthcare at the publicly- and privately-owned facilities and without discrimination;

b. provide state-funded healthcare services that were to remain free at the point of delivery to patients entitled to receive such healthcare services; and

c. promote Malta as a regional hub for fee-paying international and private patients.

3.2.5 Furthermore, the Government and the SHC agreed on the principle that healthcare services provided to international and private patients were to be delivered in a manner that was not intentionally designed to have a material adverse effect on the delivery of healthcare services to public patients. In this context, there was to be no discrimination in how healthcare services were delivered between public patients and international or private patients.

3.2.6 The parties acknowledged the obligations of the SHC under the terms of the concession agreements for the PPP at the GGH, the KGRH and the SLH and, in particular, the responsibilities of the concessionaire to manage the delivery of healthcare services under the terms of the HSDA and the LSA. To optimise the delivery of such services, and without prejudice to the Public Service Commission procedures that regulate the manner by which doctors are recruited in Malta, the SHC required:

a. the exclusive ability to nominate and approve candidates for appointment to clinical chairs, key doctor leadership and departmental head roles across the three hospitals;

b. a key decision-making role alongside the Government in the appointment of doctors to work at the hospitals, including a veto on any actual appointment in the concessionaire's absolute discretion;

c. the ability to offer separate employment opportunity routes in circumstances where the Government appointment route had failed to identify a suitable candidate over an agreed period;

d. assurance that the registration of candidates appointed in terms of the above sub-paragraph (c) for entry into the relevant basic and/or specialist registers would be fast-tracked; and

e. the power to determine, at its absolute discretion, how it would comply with its obligations under the concession agreements for the PPP and, in particular, staffing levels and designations of staff at the GGH, the KGRH and the SLH.

3.2.7 Notwithstanding the above stated, the parties agreed that the principles and any contractual arrangements applying between them would not amend the provisions of the concession agreements for the PPP, which could only be amended in accordance with their specific terms.

3.2.8 In addition, stated in the Agreed Key Principles was that the staffing requirements for the GGH, the KGRH and the SLH were to be given equal attention, focus and financial support as the staffing requirements of other medical institutions managed by the Government or otherwise based in Malta. The Government and the SHC acknowledged that there were staffing challenges across the three hospitals and – without prejudicing existing obligations under applicable collective agreements – sought to work together to ensure that doctor posts were filled at all times as expeditiously as possible and in accordance with measures stipulated in the Agreed Key Principles intended to facilitate urgent replacements and new hires. The parties acknowledged the need to consider how to incentivise doctors employed by the Government to fill empty posts at the hospitals, with particular focus on posts that remained vacant following the regular process of calls and locum offers. To this end, the Government and the SHC acknowledged that the incentives were to include arrangements that would allow doctors employed by the Government to deliver healthcare services to international and private patients alongside the healthcare services that they deliver to public patients within the terms of their employment with the Government.

3.2.9 Another aspect addressed in the Agreed Key Principles was that of coordination at the clinical level. In this context, the Government and the SHC were to ensure that their respective chief medical officers (CMOs) cooperated and communicated regularly and transparently in relation to clinical matters. Of note was that the parties agreed that the views of the concessionaire's CMO were to prevail in relation to any administrative, management and/or operational matters relating to the delivery of healthcare services at the GGH, the KGRH and the SLH.

Discussion process and purpose

3.2.10 Noted in the correspondence submitted by the SHC to the Government on 26 July 2018 were key points relating to the process and purpose of discussions that were to ensue between the parties from this point onwards. Stated in this respect was that, following the acquisition of VGH Ltd by SHC International Ltd, the Concessionaire and the Government had agreed to discuss and clarify certain matters in relation to the concession agreements.

3.2.11 Particularly acknowledged was that, since the GGH, the KGRH and the SLH were to be transferred back to the Government at the end of the term, it was critical that the works and the concession agreements were optimised and aligned with the overall requirements of all stakeholders. Further acknowledged was that the concession agreements were to be in a 'bankable' form in the international markets to achieve a reasonable cost of capital and for the ultimate benefit of the Government and the people of Malta.

3.2.12 Cited as reference rendering permissible the discussions envisaged was the SCA, which stated that the parties could amend or waive any term of the SCA by written consent provided that the nature and general scope of the SCA was not to be amended. The HSDA and the LSA contained similar provisions.

3.2.13 It was against this backdrop that the SHC set out certain headline matters, without limitation at this stage, that they sought to discuss and clarify with Government in relation to the concession agreements. The SHC anticipated several drafting, legal and secondary changes to the concession agreements to ensure that the agreements were clear, certain, consistent and bankable. It was proposed that these changes would be part of the process of discussion.

Headline matters proposed for discussion

3.2.14 The headline matters proposed for discussion by the SHC in its letter of 26 July 2018 comprised the construction and development required in terms of the concession; the services, charges, other payments and the mechanism that was to regulate such transactions; the human resource (HR) element; and other matters of a legal and finance-related nature.

Construction and development

3.2.15 In terms of the construction programme, design and specifications, the SHC indicated that the revised construction milestones and the construction programme were under review, as were the design and specifications to ensure that they were optimised and implementable. The Concessionaire committed to providing these documents to the Government after they were discussed with the construction contractors.

3.2.16 The SHC put forward an indicative construction milestone schedule, as illustrated in Figure 7, for further discussion.

Figure 7 | Indicative construction milestones proposed by the SHC, July 2018

Construction milestone	Completion date
Anatomy Centre	30 September 2018
Barts Medical School	31 May 2019
Conceptual design plans	9 months from amendment signing
50 additional beds for the KGRH at the SLH	30 months from amendment signing
80 rehabilitation beds for the SLH	30 months from amendment signing
New build at Gozo	48 months from amendment signing
Completion of renovation at the GGH	54 months from amendment signing
Completion of the SLH tourism beds	42 months from amendment signing

3.2.17 Other matters raised in respect of the construction and development of the project related to measures intended to ensure the operational flexibility of working with sub-contractors; the streamlining of guarantees; the management and impact of changes requested by the QMUL in relation to the Barts Medical School; the scope and structure of the SLH nursing school; the scope and structure of other works; arrangements governing medical tourism; and the setting of thresholds for substantive variations.

Services, charges, other payments and the payment mechanism

3.2.18 Several points for discussion were also raised by the SHC in relation to the services that were to be provided, how these were to be charged and compensated, and mechanisms of payment. Of note was that the Concessionaire proposed a phased completion and payment system, whereby, as parts of the GGH, the KGRH and the SLH became operational, payments for clinical services would be stepped-up in phases, thereby corresponding to the phased-in service delivery.

3.2.19 Acknowledged in the 26 July 2018 correspondence was that the Government and the SHC were to discuss and clarify the nature and scope of the clinical services to be delivered at each of the hospitals. In addition, the Government and the Concessionaire were to work with Mater Dei Hospital (MDH) to agree on appropriate documents, clinical protocols and agreements in order that the services delivery obligations between the MDH and the GGH, the KGRH and the SLH were fulfilled in the best interests of patients and to promote effective inter-hospital working.

3.2.20 Crucially, the SHC noted that several provisions in the HSDA relating to charges and availability were unclear, and that discussions were to include a review of how charges and related pricing uplifts had been applied to date. Furthermore, the Concessionaire noted that the charges payable to it by the Government in relation to the medical college, the dermatology centre and the air ambulance service required clarification, particularly in terms of the process for agreeing payment sums and the timing of payments.

3.2.21 Other matters raised in relation to payments comprised the rationale and purpose of the €3,000,000 concession fee; the requirement of the SHC to invest two per cent of its annual profit in environment enhancements and social projects; and the need to streamline the invoicing procedure.

Human resources

3.2.22 Several proposals made by the SHC related to the management of HR in relation to the concession, which element was regulated through the LSA. The Concessionaire proposed to develop and agree on a protocol for the operation of the LSA provisions and cited the need to discuss a mechanism to implement the Agreed Key Principles.

3.2.23 The SHC noted that a revised list of resources for existent service levels was to be agreed as a baseline and that it, as the Concessionaire, ought to have flexibility under the LSA to adjust the baseline resources to best reflect the service delivery requirements under the concession agreements.

3.2.24 Reference was also made to the proposal that LSA payments for the resources ought to be made monthly on an actuals basis; that the parties were to agree on a mechanism for the monthly verification of available resources; for the separation of payments relating to the LSA and the HSDA, and how these were not to be set off; that the Concessionaire was to have the power to manage the resources; measures relating to quality assurance; and career progression considerations.

Other legal and bankability matters

3.2.25 Numerous other matters raised related to legal considerations and the financial sustainability of the project. If deemed necessary, the SHC was to seek a legal opinion from the Government's lawyers and/or the Office of the Attorney General to provide comfort to its lenders. The legal opinion was required to confirm customary matters such as capacity, authority, enforceability, due process, procurement and state aid.

3.2.26 The SHC referred to the fact that the commencement date of the term was unclear and warranted clarification. Moreover, the Concessionaire noted that the Emphyteutical Deed ought to be coterminous with the other concession agreements.

3.2.27 Another matter raised in the correspondence submitted by the SHC related to rectifiable concessionaire events of default. The Concessionaire deemed the definition of such defaults in the contractual framework as very wide, covering non-compliance with any provision of the SCA. The SHC proposed that such events of default be limited to events bearing a material and adverse effect. In addition, the SHC noted that it, as the Concessionaire, ought not to be held liable for any breach or default caused for reasons beyond its reasonable control, citing as an example a breach or default by the Government.

3.2.28 Other issues raised by the SHC related to clarifications required in connection with the issuance and renewal of medical licences; in relation to matters associated with Government step-in; that Government's failure to pay any amount within 30 days was to entitle the Concessionaire to trigger an event of default; amendments sought in terms of force majeure provisions and changes in law; adjustments proposed in the calculation of termination payments; possible changes required in relation to assumed contracts and insurance provisions; amendments necessary to clarify that the Concessionaire was fully permitted to sub-contract; refinement in defining finance-related terms; revisiting data protection obligations; clarification of mutual indemnity provisions; and streamlining governance, oversight and reporting arrangements.

3.3 The setting up of the Clarification Steering Committee and the initiation of discussions with Steward Health Care

3.3.1 Following the correspondence submitted by the SHC to the Government on 26 July 2018, the ensuing development of note based on documentation provided to the NAO was a meeting held between a committee representing Government and the Concessionaire on 8 October 2018. According to the PS MFH, the committee constituted in this respect – the so termed Clarification Steering Committee – was not appointed to direct the negotiation of the terms of the concession, but to oversee the functioning and performance of the said concession.

3.3.2 The members of the Clarification Steering Committee were the PS MFH, the PS MOT, a Director General MFH, and advisors representing the MFH and the MOT. Attending on behalf of the SHC were representatives of its management and its legal advisors.

3.3.3 The PS MFH informed the NAO that the public officials and advisors nominated to this Committee were not formally appointed but merely designated to appear on behalf of the Government through the respective PS. Although the PS MOT did not provide the NAO with letters of appointment issued to the Government's representatives, correspondence dated 25 June 2018 addressed to the Minister for Tourism was made available. Through this correspondence, the PS MOT sought the endorsement of the Minister for Tourism for the nomination of several advisors to the Clarification Steering Committee and the possible involvement of the Executive Chair Projects Malta Ltd as necessary. The endorsement of the Minister for Tourism was not made available to the NAO.

3.3.4 Queries were submitted regarding whether conflict of interest declarations were signed by the persons nominated to the Clarification Steering Committee. In response, the PS MFH drew the NAO's attention to the fact that the public service employees nominated to the Committee were bound with the obligation to not have any conflict of interests and to the non-disclosure of confidential information by the Public Administration Act. On the other hand, those persons nominated to the Committee who were not public service employees were bound by their respective contracts of employment or engagement.

3.3.5 While the necessity of the involvement of the MFH in discussions with the Concessionaire was evident, that of the MOT was less clear. When queried in this respect, the PS MOT informed the NAO that the Ministry and its representatives were assisting in this process to ensure continuity and knowledge transfer. Furthermore, the PS MOT asserted that the Ministry also bore direct responsibility for Projects Malta Ltd, which stakeholder was, earlier in the process, involved in the issuance of the concession. Somewhat related was that stated by the PS MFH, who informed the NAO that the meetings of the Clarification Steering Committee were hosted at the MOT.

3.3.6 In submissions to the NAO, the PS MOT further elaborated on the context as to why the setting up of the Clarification Steering Committee was necessary. Two aspects were highlighted. First, the Committee was to serve as a forum for the clarification of certain contractual provisions whose interpretation was creating doubt. The PS MOT highlighted the input of the MFH in the identification of several service-related obligations that warranted address. Cited as examples of these grey areas were ambiguities in terms of which party was to fund certain expenses, what services were included in the fixed fee payments, and difficulties in service measurement. Second, according to the PS MOT, there was concern that the concession would be classified as on-balance sheet, a situation that the Government sought to avoid. Reference was also made to the changing Eurostat guidelines governing PPPs that rendered it more difficult for the Government to shift this concession off its balance sheet. According to the PS MOT, it was against this setting that the Clarification Steering Committee was established.

3.3.7 The NAO reviewed the minutes of the initial meetings held by the Clarification Steering Committee with the representatives of SHC Malta, the first of which was held on 8 October 2018. Indicated in the minutes of this meeting was that the aim of these discussions was to clarify certain issues, particularly issues relating to the services that were to be provided by SHC Malta and the quantities in which these were to be provided. The Committee emphasised that these were solely clarification meetings and not a renegotiation of the deliverables originally contracted by the Government from the VGH.

3.3.8 The PS MFH reminded the members that:

a. the concession agreements were based on specific rules emanating from public procurement law and that the scope of the adjustments should be limited in view of the regulations emanating from the law relating to this field;

b. this process of consultation should not extend beyond the scheduled three days; and

c. these should be clarification meetings and not renegotiation meetings.

3.3.9 Despite that stated by the PS MFH, that the process was one of clarification and not of negotiation, the minutes of meetings held by the Clarification Steering Committee immediately indicated otherwise. By means of example, during the meeting held on 8 October 2018, the SHC noted that not every medical service could be catered for at the GGH, particularly in instances where there was insufficient demand. In response, the Government indicated that, as a matter of principle, should any service be withdrawn from those already contracted, the Government expected to receive a fair compensation.

3.3.10 Other meetings were held between the Clarification Steering Committee and the SHC towards the end of 2018. The key points of discussion and negotiation centred around the services that were to be provided by the SHC and the achievement of the concession milestones; financial considerations, including payments by Government and the possible revision to fee structures, the securing of financing, the investment to be made by the SHC and the overall sustainability of the project; and the transition period. The final record of the work of the Committee made available to the NAO were minutes of a meeting held on 31 October 2018. Despite requests by this Office, no further documentation substantiating discussions held between the Government and the SHC was provided in relation to this phase of negotiations.

3.3.11 Notwithstanding this, the NAO obtained an element of insight of discussions held through submissions made by the MFH. According to the Ministry, this phase of discussions was led by the MOT and was characterised by the active involvement of a legal advisor of the SHC. The focus of these initial discussions was on providing clarity to certain aspects of the concession. The PS MFH indicated that the agenda for these discussions was not structured and generally entailed the exchange of contracts as revised by the SHC's legal advisors. This approach resulted in insufficient opportunity for the parties to discuss their overall priorities, the objectives that they sought to achieve, how these were to be realised and how the parties were to record progress being registered. Of note to the NAO were observations by the PS MFH, who argued that, as a result of this approach, the broader objectives of discussion between the parties were not appropriately set out during this phase of interaction.

3.3.12 The MFH also referred to the Eurostat classification of the concession as on-government balance sheet as one of the issues that warranted discussion. According to the MFH, the Ministry sought to highlight the need to correct the imbalance in the risks and rewards of the concession, perceived by it as favourable to the SHC. On the other hand, the MFH noted that the SHC sought to introduce revisions that further aggravated the imbalance against the Government, for example through the introduction of a broader definition of what could constitute a force majeure. The drive by the SHC to revise the risk and reward model in its favour was tied to its understanding that the concession, in its existing form, was not bankable. In turn, the MFH contended that the concession was not bankable because the medical tourism component had not yet been appropriately developed.

3.3.13 Notwithstanding the instances of divergence, the MFH conceded that there were points of agreement registered with the SHC during this early phase of discussions, citing as an example its effort to revise the fixed fee model of payment for beds irrespective of use. The Ministry sought to revise the €600 per bed per day payable to the SHC, effective following the completion date, which guaranteed revenue to the Concessionaire and was one of the factors highlighted by Eurostat as reducing the risk that it ought to have borne. To rectify this matter, the MFH appointed the Consultant MFH and the Advisor MFH to establish a proxy to the flat fee structure stipulated in the concession agreements, which proxy was to result in an equivalent overall payment to the SHC yet be contingent on the delivery of services provided by the Concessionaire. The MFH highlighted that discussions also focused on the clinical elements of the concession, through revisions to the allocation of beds and optimisation of services. While the MFH notionally capped the overall payment by the Government at €92,000,000, this amount could be augmented through additional services that could be provided by the SHC. It was through these revisions - that shifted payments away from an availability model towards a delivery model – that the Ministry sought to incentivise the SHC.

3.3.14 According to the PS MFH, the discussions held by the parties were detailed and resulted in draft agreements being exchanged. However, these negotiations did not translate into changes to the concession agreements. Elaborating in this respect, the PS MFH explained that these negotiations resulted in an MoU being submitted to Cabinet towards the end of 2019; however, this is reported on in detail in section 3.5 of this Report.

3.4 Waiving performance guarantees and efforts at securing financing

Cabinet's initial waiver to Steward

3.4.1 In parallel with the discussions being held between the Clarification Steering Committee and the SHC were developments registered relating to the Concessionaire's obligation to submit a performance guarantee and evidence of it having secured financing. In this respect, on 15 October

2018, the Minister for Health submitted a memorandum to Cabinet titled 'Steward Healthcare Performance Guarantee and Finance Agreement'. The cited objective of this memorandum was that Cabinet's approval be sought for the Government to temporarily waive the obligations of SHC International Ltd in relation to the performance guarantee and the financing agreements stipulated as part of the conditions precedent in the SCA.

3.4.2 Noted in the memorandum by the Minister for Health was that the Government had been informed that the SHC had not duly rolled over the performance guarantee put in place by the VGH in accordance with the SCA. The SHC had instead provided the Government with a parent company guarantee. Consequently, Cabinet was being requested to temporarily waive the obligation borne by the SHC to provide a performance guarantee until 31 December 2018 and accept the parent company guarantee.

3.4.3 In addition, through the memorandum, the Minister for Health also sought Cabinet's temporary waiver of the obligation of the SHC to provide evidence that the primary lenders and the financing agreements to the project were in place. This temporary waiver was also sought until 31 December 2018.

3.4.4 During the Cabinet meeting of 16 October 2018, Cabinet approved the memorandum titled 'Steward Healthcare Performance Guarantee' put forward by the Minister for Health.

3.4.5 The NAO enquired with the Prime Minister whether the granting of waivers to the SHC – this being the first of several that would be issued – weakened the Government's position and conflicted with efforts intended to ensure the implementation of the concession. The Prime Minister argued that such waivers were consented to by the Government to allow sufficient time for negotiations required for the concession to succeed and emphasised the importance of considering the concession from a broader perspective, beyond the remit of any particular ministry.

3.4.6 Given that contract-related matters were ordinarily brought to the attention of Cabinet by the Minister for Tourism, the NAO enquired as to the context for the involvement of the Minister for Health in this submission to Cabinet. The Minister for Health informed this Office that, in the months leading to this memorandum to Cabinet, he was informed that the MOT was negotiating with the SHC, which negotiations were to result in additional payments by the Government to the Concessionaire without any increase in services. This was deemed unacceptable to the Minister for Health, who raised objections with the Prime Minister. According to the Minister for Health, the Prime Minister assigned responsibility for negotiations to him; however, the Minister for Health indicated that, despite this commitment, negotiations continued between the MOT and the SHC without his involvement. The Minister for Health explained that the SHC would hold discussions with the Minister for Tourism and utilise commitments provided by the latter as leverage in subsequent negotiations with the Minister for Health. This situation resulted in the responsibility assigned to the Minister for Health being short-lived, with the Minister for

Tourism reassuming control of negotiations between the Government and the SHC. Despite concerns raised, the Minister for Health acknowledged that the MOT, through its responsibility for Projects Malta Ltd, had a cross-cutting function in supporting major PPPs.

Of amended and restated agreements and glimpses of negotiations

The first Amendment and Restatement Agreement (Direct Agreement)

3.4.7 Further developments regarding the financing of the concession were noted in November 2018. Through the first Amendment and Restatement Agreement (Direct Agreement) entered into by the Government, the SHC, and the BOV, an overdraft facility of €5,000,000 and a loan facility of €3,000,000 made available by the latter to the Concessionaire, were to be recognised as part of the lenders' debt as regulated by the SCA. This implied that the Government would assume responsibility for this debt in the event of any default.

3.4.8 It was in this respect that, on 13 November 2018, the Government, represented by the Minister for Tourism, and Steward Malta Management Ltd, Steward Malta Assets Ltd, Steward Malta Ltd and the BOV entered into an Amendment and Restatement Agreement (Direct Agreement). Cited in the preamble to the Agreement was that the parties, bar the BOV, had entered into the SCA on 30 November 2015. It was further noted that the SCA had been amended, supplemented and/or varied by amendments, addenda and/or side letters dated 19 May 2016, 15 September 2016, 14 February 2017, 23 June 2017 and 30 June 2017 and that copies of all these agreements had been provided to the BOV.

3.4.9 Further noted in the preamble to the Amendment and Restatement Agreement (Direct Agreement) was that a First Sanction Letter dated 8 May 2018 had been issued, whereby the BOV had granted Steward Malta Management Ltd an overdraft facility of €5,000,000 to finance its working capital requirements in connection with the operation of the sites. As a condition precedent to the overdraft facility being made available, the parties to the Amendment and Restatement Agreement (Direct Agreement) had entered into a Direct Agreement dated 22 June 2018, whereby, inter alia, they had acknowledged and confirmed that the BOV was to be considered to fall within the SCA's definition of the term 'lenders'. This classification meant that the BOV was to benefit from all stipulations made by the Government and the Concessionaire included in the SCA in favour of lenders. Further acknowledged and confirmed in the preamble to the first Amendment and Restatement Agreement (Direct Agreement) was that Steward Malta Management Ltd's obligations as borrower were to be considered to fall within the SCA's definition of the term 'lenders' debt' and that the aforementioned First Sanction Letter was to fall within the SCA's definition of 'financing agreements'.

3.4.10 Further noted in the preamble was that a Second Facility Agreement had been entered into on 19 September 2018, whereby the BOV had granted a loan facility of €3,000,000 to Steward Malta Management Ltd. A condition precedent to this loan facility was that an Amendment and Restatement Agreement (Direct Agreement) to the Direct Agreement was entered into to acknowledge and confirm that the Second Facility Agreement fell within the SCA's definition of 'financing agreements'.

3.4.11 A request for the Second Facility Agreement was submitted to the MOT by the NAO. In response, the PS MOT informed this Office that the Ministry was not in possession of this Agreement as it was not a party to it and was not involved in its drafting and negotiation. Again, the NAO deemed that stated by the PS MOT as anomalous, for the Government, as represented by the Minister for Tourism, assumed obligations entered into by the SHC, albeit contingent, and therefore had a direct interest in the Second Facility Agreement.

3.4.12 The matter of Government's access to the Second Facility Agreement was also referred to MFIN. In reply to the queries of the NAO, the PS MFIN informed this Office that the Ministry did not have the requested documentation.

3.4.13 Noted in the Amendment and Restatement Agreement (Direct Agreement) was that the Direct Agreement would remain effective and would be read and construed as one document along with the Amendment and Restatement Agreement (Direct Agreement). The Direct Agreement dated 22 June 2018 was restated on 13 November 2018 and is referred to from this point onwards as the First Amended and Restated Direct Agreement. This was included as an annex to the Amendment and Restatement Agreement (Direct Agreement).

3.4.14 In the First Amended and Restated Direct Agreement, the parties acknowledged and confirmed that the loan agreement entered into on 19 September 2018 fell within the SCA's definition of 'financing agreements'. The parties further acknowledged and confirmed that this Agreement was to be considered as the 'Direct Agreement' as defined in the SCA.

3.4.15 The Government acknowledged its obligations in case the SCA or the HSDA were terminated in accordance with the termination and termination payments clauses in the SCA. The Government further acknowledged and confirmed that these obligations and those emanating from the termination or lapse clause in the HSDA were to be due to the BOV until all Steward Malta Management Ltd's obligations were discharged in full. Any payment made in respect of the termination and termination payments clauses in the SCA was to be first made to the BOV to discharge any outstanding obligations by Steward Malta Management Ltd.

3.4.16 The Government, Steward Malta Management Ltd, Steward Malta Assets Ltd and Steward Malta Ltd further confirmed that no amendment that could materially or adversely affect the Bank's rights as a 'lender' in relation to the 'lenders' debt' and the 'financing agreements' were to be made to the SCA or the HSDA without the BOV's prior written consent.

3.4.17 Further noted was that the rights and obligations of the Government and Steward Malta Management Ltd were not capable of assignment without the prior written consent of the BOV. Furthermore, the BOV could assign, transfer or dispose of any of its rights and/or obligations under this Agreement as it deemed fit but with the prior written consent of Steward Malta Management Ltd and the Government.

3.4.18 The First Amended and Restated Direct Agreement was to remain in full force and effect until the earlier of the date of termination of the SCA or the date on which all of Steward Malta Management Ltd's obligations were irrevocably and unconditionally discharged in full.

3.4.19 The First Amended and Restated Direct Agreement also stipulated several other conditions, particularly in relation to the ranking of the Agreements, amendments thereto, the exercise of rights and remedies and invalidity. Of note was that this Agreement was to prevail over the SCA in case of any conflicts or inconsistencies. Furthermore, the First Amended and Restated Direct Agreement could only be amended with the written consent of the parties. Additionally, no waiver of any of its provisions was to be valid or binding unless given in writing and signed by the party granting or consenting to such waiver.

The first Amendment and Restatement Agreement (Security by Title Transfer Agreement)

3.4.20 Steward Malta Management Ltd, the BOV and the Government, represented by the Minister for Tourism, entered into an Amendment and Restatement Agreement (Security by Title Transfer) on 13 November 2018. Noted in the preamble to the first Amendment and Restatement Agreement (Security by Title Transfer) was that, through the Security by Title Transfer Agreement dated 22 June 2018, Steward Malta Management Ltd, as continuing security for the performance of its secured obligations under the First Sanction Letter (whereby the BOV had granted Steward Malta Management Ltd an overdraft facility of €5,000,000 to finance Steward Malta Management Ltd's working capital requirements in connection with the operation of the sites), transferred and assigned by way of security onto the BOV, any and all rights, benefits and entitlement to, the assigned rights (that is, Steward Malta Management Ltd's rights, title and interest in the HSDA, including the receipt of the charges from the Government).

3.4.21 Reference was also made to the Second Facility Agreement, amounting to €3,000,000, that the BOV granted in favour of Steward Malta Management Ltd. As a condition precedent to the drawdown of the Second Facility Agreement, Steward Malta Management Ltd agreed to extend the security granted by it in favour of the BOV under the Security by Title Transfer Agreement to secure the performance of its obligations under the Second Facility Agreement. Therefore, the First Amended and Restated Security by Title Transfer Agreement supplemented, amended and restated the Security by Title Transfer Agreement in this respect.

3.4.22 Noted was that the Security by Title Transfer Agreement would remain in full force and effect and that nothing in the first Amendment and Restatement Agreement (Security by Title Transfer) was to be construed as a waiver, variation or amendment of any of the provisions of the Security by Title Transfer Agreement. The Security by Title Transfer Agreement and the First Amended and Restated Security by Title Transfer Agreement were to be read and construed as one document. Additionally, the first Amendment and Restatement Agreement (Security by Title Transfer) did not terminate or extinguish the Security by Title Transfer constituted by the Security by Title Transfer Agreement.

3.4.23 The First Amended and Restated Security by Title Transfer Agreement was attached as a schedule to the first Amendment and Restatement Agreement (Security by Title Transfer). The parties to the Agreement were Steward Malta Management Ltd, the BOV, and the Government, represented by the Minister for Tourism. Noted in the preamble was that to secure the secured obligations, that is, Steward Malta Management Ltd's obligations under the First Sanction Letter and the Second Facility Agreement, Steward Malta Management Ltd wished to enter into the First Amended and Restated Security by Title Transfer Agreement with the BOV. It was further noted that the parties were entering into this Agreement so as to establish and regulate the terms and conditions under which the allocation of the assigned rights was to take place and under which the release and termination of the assignment was to be effected.

3.4.24 Through the First Amended and Restated Security by Title Transfer Agreement, Steward Malta Management Ltd was transferring and assigning by way of security onto the BOV, which accepted and acquired all rights, benefits and entitlement to, the assigned rights with full legal title, as continuing security for the performance of its secured obligations. The assignment was being made in terms of Article 2095F of the Civil Code as security for the performance of the secured obligations.

3.4.25 Steward Malta Management Ltd undertook in favour of the BOV that it would enter such other deeds, documents or agreements as could be necessary or desirable to ensure that the security created over the assigned rights and the secured obligations was duly constituted in favour of the Bank and effective.

3.4.26 Steward Malta Management Ltd and the BOV agreed that, for all effects and purposes, the BOV was to be considered the absolute owner of the assigned rights and that these did not form part of Steward Malta Management Ltd's patrimony, even after its insolvency. It was also agreed that the BOV was to be deemed as having acquired title and possession of the assigned rights as a fiduciary in terms of the Civil Code for the sole purpose of:

a. retaining title and possession of the assigned rights and exercising these as security for the performance of the secured obligations;

b. applying such assigned rights in settlement of the secured obligations; and

c. returning the assigned rights after the release date (that is, the date on which any claw back period in terms of the applicable law lapses, with such claw back period being calculated from the date when all secured obligations have been performed by Steward Malta Management Ltd under the First Sanction Letter and Second Facility Agreement) of the secured obligations or of returning any excess in value of the assigned rights in the case of an enforcement following a declared default (that is, an event of default in terms of the First Sanction Letter, the Second Facility Agreement and any default under this Agreement – such declared default did not require any authorisation and/or confirmation from a competent court and would occur ipso jure under this Agreement), in any one of the aforementioned cases in accordance with the Agreement.

3.4.27 It was further noted that nothing in this Agreement was to be construed as placing on the BOV any liability in respect of any obligations or payments relating to any of the assigned rights or to any rights, and Steward Malta Management Ltd was to indemnify and hold harmless the BOV against and from all demands made against it, payments made by it, and costs, expenses damages, losses or other liabilities incurred or suffered by it in respect of any such obligations or payments.

3.4.28 The Government acknowledged and consented to the assignment created by virtue of the First Amended and Restated Security by Title Transfer Agreement and agreed that from the date of this Agreement until the release date:

a. any and all charges and assigned rights due by it in favour of Steward Malta Management Ltd under the HSDA were to be paid in accordance with the terms of the First Amended and Restated Security by Title Transfer Agreement;

b. no amendment that could materially and adversely affect the BOV's ability to recover the full amount of charges due in terms of the HSDA was to be made to the HSDA without the BOV's prior written consent; and

c. the right to terminate or assign the HSDA was to be exercised only by the BOV, to the exclusion of Steward Malta Management Ltd.

3.4.29 Furthermore, the Government waived its rights of set-off and other defences that it could have against Steward Malta Management Ltd and was not to be entitled to raise any defence against any claim made by the BOV with respect to the assigned rights. Such waiver and renunciation of rights was made in terms of Article 2095J(3) of the Civil Code.

3.4.30 Following the completion date, Steward Malta Management Ltd was to, in security for the due, proper and punctual performance of all its obligations under the Transaction Agreements, procure and deliver to the Government at its sole expense an unconditional and irrevocable on demand prime bank guarantee for €9,000,000 issued by a bank licensed to carry out banking activities in Malta or in a Member State of the EU and acceptable to the Government, or such other form of security as was acceptable to the Government.

3.4.31 It was noted in the First Amended and Restated Security by Title Transfer Agreement that Steward Malta Management Ltd and the Government agreed that the prime bank guarantee was to be in replacement of the performance guarantee and that the latter would not be required to be provided to the Government, as was currently required under the SCA. This provision was to come into effect following the completion date.

3.4.32 The BOV was to only exercise the assigned rights subject to and in accordance with the provisions of the First Amended and Restated Security by Title Transfer Agreement, the HSDA and applicable law.

3.4.33 It was further agreed that:

a. all charges due by the Government to Steward Malta Management Ltd in terms of the HSDA were, during the continuance of the First Amended and Restated Security by Title Transfer Agreement, to be due to the BOV and that these amounts were to be paid by the Government in accordance with the provisions of this Agreement;

b. subject to 3.4.33.c, all and any other rights as could be exercised by Steward Malta Management Ltd in terms of the HSDA were to, during the continuance of the First Amended and Restated Security by Title Transfer Agreement, be due to the BOV;

c. until the occurrence of a declared default and following such declared default, on the receipt of written instructions to the contrary from the BOV, Steward Malta Management Ltd could continue to deal with the counterparties to the HSDA and exercise all its rights in terms of the HSDA, other than:
    i. the right to receive payment of the charges from the Government in accordance with the HSDA and to judicially enforce payment and recovery of such charges before a court of law or arbitral tribunal,
    ii. the right to waive or seek reduction of the charges from the Government in accordance with the HSDA and to waive its right to enforce payment and recovery of such charges,
    iii. rights relating to the termination of the HSDA,
    iv. and rights relating to assignment of the HSDA; and

d. Steward Malta Management Ltd was to notify the BOV immediately on any amendment being made to the HSDA or the SCA.

3.4.34 Also consented to was that the assignment was a continuing security for the due and punctual performance of the secured obligations and, subject to the terms of the First Amended and Restated Security by Title Transfer Agreement, the assignment could not be terminated and re-transfer of the assigned rights could not take place unless otherwise permitted by this Agreement. Following the final and full repayment of the secured obligations in accordance with the provisions of the First Sanction Letter and the Second Facility Agreement, the BOV was to re-transfer to Steward Malta Management Ltd the assigned rights by executing a transfer agreement provided that the re-transfer was not to occur prior to the release date.

3.4.35 Following the occurrence and during the continuance of a declared default, the BOV could give notice in writing to Steward Malta Management Ltd informing it of the declared default. Once such notice was sent, the BOV would be entitled to continue to exercise any right competent to Steward Malta Management Ltd under the HSDA, and realise the assigned rights in one of the following ways: by selling them; by the setting off or netting their value and applying it in discharge of the secured obligations; or by their judicial sale. The BOV was to indicate the way it intended to realise the assigned rights by means of a written notice sent to Steward Malta Management Ltd.

3.4.36 If the assigned rights were sold, their value was to be established through reference to the Civil Code, any market value, or where there is no market value, this was to be the price established by an independent competent valuer appointed by the BOV.

3.4.37 Furthermore, the Government acknowledged and accepted that the BOV could sell the assigned rights. The Government also acknowledged and accepted that the HSDA could only be dissolved, terminated or rescinded in accordance with and on terms of the HSDA, and that without prejudice to the right of either party to the HSDA, to request the specific performance of their respective obligations arising under the HSDA or under law. Any other ground for the early dissolution or termination or rescission of the HSDA arising under law was excluded.

3.4.38 All payments arising in relation to the assigned rights payable to and received by the BOV in accordance with the First Amended and Restated Security by Title Transfer Agreement, including proceeds of any sale of all or any part of the assigned rights and received by the BOV under this Agreement were to be credited to Steward Malta Management Ltd's bank account with the BOV and were to be applied in full to the payment of the secured obligations in accordance with the terms of the First Sanction Letter and the Second Facility Agreement, as the case could be.

3.4.39 The First Amended and Restated Security by Title Transfer Agreement also dealt with other matters such as negligence in realisations, indemnity, fees and expenses incurred in the execution of the Agreement and severance.

A glimpse of negotiations

3.4.40 Aside from the series of amendment and restatement agreements that the Government entered into with SHC and the BOV, the NAO had scant visibility over developments that occurred between October 2018 and July 2019. A glimpse of the interactions between the Government and the SHC was provided in an indicative timeline submitted to this Office by the latter. The timeline, dated 23 April 2019, outlined the procedure that was to be followed for the review of the SCA, the HSDA and the LSA. Also specified was the scheduling of meetings in Malta, the process of review of the contracts, the holding of negotiations, final revisions and the signing of the amended and restated concession agreements. This process was planned to occur between April and June 2019.

3.4.41 The NAO was not provided with any documentation by the Government that would have shed light on interactions with the SHC during this period. While the broader context to these interactions indicated that the MOT continued to drive the project forward, while the MFH provided support, a more nuanced understanding was not possible, mainly due to the dearth of information made available.

The second Amendment and Restatement Agreement (Direct Agreement)

3.4.42 Towards mid-2019, the Government, the SHC and the BOV entered into another Amendment and Restatement Agreement (Direct Agreement) to recognise the €28,150,000 in financing made available by the latter to the Concessionaire as part of the lenders' debt in terms of the SCA. The implication of this recognition was that the Government would assume responsibility to honour the repayment of the facility made available in case of default.

3.4.43 In this respect, the Government, represented by the Minister for Tourism, and Steward Malta Management Ltd, Steward Malta Assets Ltd, Steward Malta Ltd and the BOV entered into another Amendment and Restatement Agreement (Direct Agreement) on 17 July 2019. Noted in the preamble to this Agreement was that by virtue of the Third Facility Agreement dated 17 July 2019, the BOV granted a term loan facility in aggregate amount of €22,250,000 in favour of Steward Malta Assets Ltd, and a term loan facility of €5,900,000 in favour of Steward Malta Management Ltd. Further noted was that the loan facility dated 19 September 2018 granted to Steward Malta Management Ltd for the amount of €3,000,000 was to be refinanced and repaid in full by Steward Malta Management Ltd using the funds available to it under the more recent loan facility agreement.

3.4.44 It was noted that as a condition precedent to the drawdown of the facilities granted by the BOV, the parties had agreed to enter into this Agreement to amend and restate the first Amendment and Restatement Agreement (Direct Agreement) dated 13 November 2018, to, among others, acknowledge and confirm that the Third Facility Agreement – the €22,250,000 and €5,900,000 – fell within the SCA's definition of 'financing agreements'. Additionally noted was that the first Amendment and Restatement Agreement (Direct Agreement) would remain in full force and effect and that it would be read and construed with this Agreement as one document.

3.4.45 The NAO sought visibility over the Third Facility Agreement for which the Government was effectively a guarantor. Requests to this effect were submitted by this Office to the MOT since the Minister for Tourism was a signatory to the second Amendment and Restatement Agreement (Direct Agreement). In reply, the PS MOT informed the NAO that the Ministry was not in possession of the Third Facility Agreement for it was not a party to the Agreement and was not involved in its drafting and negotiation. Here too, the NAO considered the reply by the PS MOT as anomalous, for the Government was guaranteeing two SHC loans amounting to €28,150,000, rendering the obligation as Government's should certain circumstances materialise.

3.4.46 In view of the reply by the PS MOT, the NAO sought further clarification from MFIN. The PS MFIN informed this Office that the Ministry did not have the requested documentation.

3.4.47 The Direct Agreement dated 22 June 2018, as amended and restated by the parties on 13 November 2018 (the First Amended and Restated Direct Agreement) and again on 17 July 2019 (the Second Amended and Restated Direct Agreement), was included in an annex to the second Amendment and Restatement Agreement (Direct Agreement).

3.4.48 The parties to the Second Amended and Restated Direct Agreement acknowledged and confirmed that all obligations of Steward Malta Management Ltd under the First Sanction Letter, dated 8 May 2018, and those as defined under the loan agreement entered into on 17 July 2019 fell within the SCA's definition of 'financing agreements'. The parties further acknowledged and confirmed that this Second Amended and Restated Direct Agreement was to be considered as the 'Direct Agreement' as defined in the SCA. Also noted was that the Second Amended and Restated Direct Agreement was to prevail over the SCA in case of any conflicts or inconsistencies.

The second Amendment and Restatement Agreement (Security by Title Transfer)

3.4.49 Steward Malta Management Ltd, the BOV and the Government, represented by the Minister for Tourism, entered into another Amendment and Restatement Agreement (Security by Title Transfer) on 17 July 2019. Noted in the preamble to the second Amendment and Restatement Agreement (Security by Title Transfer) was that, through the Security by Title Transfer Agreement dated 22 June 2018, Steward Malta Management Ltd, as continuing security for the performance of its secured obligations under the First Sanction Letter, transferred and assigned by way of security onto the BOV, any and all rights, benefits and entitlement to the assigned rights.

3.4.50 Further noted in the preamble to the second Amendment and Restatement Agreement (Security by Title Transfer) was that through the First Amended and Restated Security by Title Transfer Agreement, dated 13 November 2018, the Security by Title Transfer Agreement of 22 June 2018 was amended and restated to, among others, secure the performance of the obligations of Steward Malta Management Ltd under the Second Facility Agreement amounting to €3,000,000.

3.4.51 As a condition precedent to the drawdown of the facilities granted by the BOV in the Third Facility Agreement (the term loan facility of €22,250,000 in favour of Steward Malta Assets Ltd, and the term loan facility of €5,900,000 in favour of Steward Malta Management Ltd), Steward Malta Management Ltd agreed to extend the security granted by it in favour of the BOV under the First Amended and Restated Security by Title Transfer Agreement to secure the performance of the secured obligations as defined in the Third Facility Agreement.[7] Therefore, the Second Amended and Restated Security by Title Transfer Agreement supplemented, amended and restated the First Amended and Restated Security by Title Transfer Agreement in this respect.

3.4.52 Noted was that the First Amended and Restated Security by Title Transfer Agreement would remain in full force and effect and that nothing in the second Amendment and Restatement Agreement (Security by Title Transfer) was to be construed as a waiver, variation or amendment

[7] On 27 August 2019, through the Third Amended and Restated Direct Agreement, it was noted that the term loan facility granted to Steward Malta Assets Ltd by virtue of the Third Facility Agreement was €22,000,000 and not €22,250,000.

of any of the provisions of the First Amended and Restated Security by Title Transfer Agreement. The First and Second Amended and Restated Security by Title Transfer Agreements were to be read and construed as one document. Additionally, the second Amendment and Restatement Agreement (Security by Title Transfer) did not terminate or extinguish the Security by Title Transfer constituted by the First Amended and Restated Security by Title Transfer Agreement.

3.4.53 The Second Amended and Restated Security by Title Transfer Agreement was attached as a schedule to the second Amendment and Restatement Agreement (Security by Title Transfer). The parties to the Agreement were Steward Malta Management Ltd, the BOV, and the Government, represented by the Minister for Tourism. Noted in the preamble was that to secure the secured obligations, that is, Steward Malta Management Ltd's obligations under the First Sanction Letter and the Third Facility Agreement, Steward Malta Management Ltd wished to enter into the Second Amended and Restated Security by Title Transfer Agreement with the BOV. It was further noted that the parties were entering into this Agreement so as to establish and regulate the terms and conditions under which the allocation of the assigned rights was to take place and under which the release and termination of the assignment was to be effected.

3.4.54 Through the Second Amended and Restated Security by Title Transfer Agreement, Steward Malta Management Ltd was transferring and assigning by way of security onto the BOV, which accepted and acquired all rights, benefits and entitlement to, the assigned rights with full legal title, as continuing security for the performance of its secured obligations. The assignment was being made in terms of Article 2095F of the Civil Code as security for the performance of the secured obligations.

3.4.55 All other provisions of the Second Amended and Restated Security by Title Transfer Agreement remained unchanged.

On referral to Cabinet

3.4.56 The NAO noted that the Direct Agreement and the Security by Title Transfer Agreement, the first Amendment and Restatement Agreements, and the Second Amendment and Restatement Agreements – entered into on 22 June 2018, 13 November 2018 and 17 July 2019, respectively – were not referred to Cabinet for endorsement despite the Government's role as guarantor. This Office's understanding was corroborated by the Minister for Health, who indicated that none of these agreements were brought to the attention of Cabinet.

3.4.57 The views of the Prime Minister on the matter were sought by the NAO. The Prime Minister maintained that approval for collateral regarding the concession was granted by Cabinet in July 2017, that is, a year prior, when the concession was still under the control of the VGH.

3.4.58 The endorsement of Cabinet referred to by the Prime Minister was traced by the NAO to a memorandum submitted by the Minister for Tourism on 11 July 2017. Among other matters brought to Cabinet's attention through this memorandum, the Minister for Tourism referred to the direct and collateral agreements – intended to guarantee the take-up of lenders' debt in the event of a concessionaire event of default – that were being finalised as part of the VGH's financial close. These agreements contemplated the simultaneous exercise by the Government of its step-in rights in terms of the concession agreement. Noted in the memorandum was that recent discussions had centred around the Sovereign Wealth Fund in the context of a bankable arrangement whereby a guarantee on debt would be provided by way of an interim measure, with the Fund taking on the lenders' debt prior to Government step-in. It was in this respect that that Cabinet was requested to endorse that the Minister for Tourism proceed with entering into an agreement with the VGH and the Sovereign Wealth Fund, which interim arrangement would eventually be replaced by direct and collateral agreements approved previously by Cabinet. That proposed by the Minister for Tourism was approved by Cabinet on 11 July 2017.

3.4.59 The NAO maintains an element of reservation regarding that stated by the Prime Minister. The reservation stems from differences that emerge in relation to the Government's guaranteeing of funds secured by the SHC through the BOV with the scenario depicted in the memorandum submitted to Cabinet by the Minister for Tourism in July 2017. At the most fundamental level, control of the concessionaire had changed, with Cabinet's endorsement sought in respect of the VGH, yet guarantees provided by the Government in favour of the SHC. Although Cabinet approved the guarantee of the VGH's debt through a Sovereign Wealth Fund, understood by the NAO as reference to the National Development and Social Fund, the Government assumed this role directly in the case of the agreements entered into between the SHC, the BOV and Government. Furthermore, the NAO noted that Cabinet's endorsement in 2017 was an in-principle approval, and that the specific amounts that the Government was guaranteeing were not brought to the attention of Cabinet. The materiality of the amounts guaranteed together with the lapse of between one and two years from approval by Cabinet to entry into the tripartite agreements, strengthens the NAO's stance that the matter ought to have brought to Cabinet's attention. Although the modality and context changed, the Government ultimately bore responsibility for the funds guaranteed.

Another Cabinet waiver granted to Steward Health Care

3.4.60 Another memorandum titled 'Hospitals Concession – Performance Guarantee' was submitted to Cabinet by the Minister for Tourism on 31 July 2019. Cited as background to the memorandum was that the SCA stipulated that until the completion of all the concession milestones, the SHC was to provide the Government with a performance guarantee of €9,000,000, which was to be held by Government in warranty of the full and faithful performance of all obligations of the concession agreement. Reference was made to the memorandum that had been submitted by the Minister for Health in October 2018, whereby Cabinet's approval for the temporary waiver of this obligation had been sought and obtained. The waiver extended until 31 December 2018 and similarly waived the obligation relative to the financing agreements.

3.4.61 The Minister for Tourism noted that the objective of his memorandum was that of seeking the approval of Cabinet for the continued temporary waiver of the SHC's obligation relative to the performance guarantee.

3.4.62 Clarified in this respect was that discussions with the SHC were ongoing. These discussions were intended to better define certain aspects of the transaction agreements that had proved unclear or cumbersome on the practical application thereof, to render the transaction agreements more easily bankable, and to crystallise the PPP's status as being off the Government's balance sheet. It was in the context of these discussions that the SHC had requested that the performance guarantee be provided following sign-off of the appropriate legal documentation, once the clarification discussions had been brought to a successful close.

3.4.63 To this end, the Minister for Tourism requested the authorisation of Cabinet for the waiver of the SHC's obligation to provide the performance guarantee until sign-off of the appropriate legal documentation, which signing-off would conclude the clarification discussions.

3.4.64 Noted in an excerpt of the minutes of a Cabinet meeting held on 5 August 2019 was that Cabinet had discussed the memorandum titled 'Hospitals Concession – Performance Guarantee' put forward by the Minister for Tourism. While the Prime Minister stated that matters were in their final stages – understood by the NAO as reference to the nearing conclusion of discussions between the Government and the SHC on aspects related to the concession – he added that the objective was for Government to have one strategy. In turn, the Minister for Finance, the Hon. Edward Scicluna, explained that MFIN, the MFH and the MOT were coordinating the monitoring of that agreed. Cabinet resolved that the temporary waiver was to remain in effect until end 2019.

The broadening of Government's risk

A redefinition of non-rectifiable government events of default

3.4.65 On 26 August 2019, the Minister for Tourism submitted a memorandum to Cabinet titled 'Hospitals Concession – Steward/BOV/GoM Direct Agreement'. Cited as background to the memorandum was that the SHC was in the process of finalising legal documentation in respect of the credit facilities that were being extended by the BOV. The relative agreements had already been finalised between the parties, including the Government, in the form of direct agreements and security by title transfer agreements.

3.4.66 Noted was that the BOV had recently felt the need to seek further safeguards in the form of a guarantee from the Government that, if the transaction documents were declared null and void by a court, the lenders' debt would effectively be paid by the Government. This was to be in respect of three separate facilities granted by the BOV to the Concessionaire, the first totalling €5,000,000, the second €3,000,000 and the third €27,900,000. Acknowledged was that Government had pushed back on the granting of any direct guarantee of lenders' debt to the BOV and that the Bank had since reconsidered its position.

3.4.67 In essence, the most recent direct agreement proposed by the BOV for execution between the parties envisaged that court-declared nullity of the transaction documents would be tantamount to a non-rectifiable government event of default and that the Government would therefore be liable to pay the lenders' debt. Stated in the memorandum was that the direct agreement now also included a warranty that each party's obligations under the transaction agreements were legal, valid, binding and enforceable obligations.

3.4.68 The objective of this memorandum was to seek the approval of Cabinet for the execution of the direct agreement, the salient clauses corresponding to which were outlined in the preceding paragraph.

3.4.69 The Minister for Tourism concluded by stating that the representation requested by the BOV raised no concerns whatsoever, while the enforceability of the BOV's rights against the Government for default in a scenario where the transaction documents had been declared null could not be said to be solid. In this context, the Minister for Tourism recommended that, given the criticality of the credit facilities in question to ensure that the hospital concession progresses to the next stage, and given the aforementioned considerations, Cabinet was requested to authorise the execution of the direct agreement as outlined. It must be noted that the direct agreement was not appended to the memorandum.

3.4.70 Cabinet approved the memorandum submitted by the Minister for Tourism titled 'Hospitals Concession – Steward/BOV/GoM Direct Agreement' a day after its submission, that is, on 27 August 2019. Noted in the excerpt of the minutes of this Cabinet meeting was that the Minister for Tourism had explained why that proposed in the memorandum was put forward and indicated that the recommended course of action was pursuant to lengthy meetings with MFIN, the BOV and other unspecified stakeholders.

The third Amendment and Restatement Agreement (Direct Agreement)

3.4.71 The Government, represented by the Minister for Tourism, and Steward Malta Management Ltd, Steward Malta Assets Ltd, Steward Malta Ltd and the BOV entered into an Amendment and Restatement Agreement dated 27 August 2019. Noted in the preamble to this Agreement was that the parties wished to amend and clarify some of the terms of the Second Amended and Restated Direct Agreement dated 17 July 2019, and were entering into this Agreement to amend and restate it.

3.4.72 It was noted that subject to the terms of this Third Amended and Restated Direct Agreement, the Second Amended and Restated Direct Agreement would remain in full force and effect and nothing in this Agreement would be construed as a waiver, variation or amendment of any of the provisions of the Second Amended and Restated Direct Agreement. Additionally, the Second Amended and Restated Direct Agreement and the Third Amended and Restated Direct Agreement were to be read and construed as one document.

3.4.73 The Third Amended and Restated Direct Agreement was attached as a schedule to the third Amendment and Restatement Agreement. Therein it was noted that the Direct Agreement was originally dated 22 June 2018, and was amended and restated on 13 November 2018, 17 July 2019 and 27 August 2019. It was entered into by the Government, Steward Malta Management Ltd, Steward Malta Assets Ltd, Steward Malta Ltd and the BOV. The significant changes between the Second Amended and Restated Direct Agreement and the Third Amended and Restated Direct Agreement identified by the NAO ensue.

3.4.74 In the preamble to the Third Amended and Restated Direct Agreement, it was noted that the term loan facility granted to Steward Malta Assets Ltd by virtue of the Third Facility Agreement was €22,000,000 and not €22,250,000 as had been cited in the Second Amended and Restated Direct Agreement.

3.4.75 It was additionally noted that the Government, Steward Malta Management Ltd, Steward Malta Assets Ltd, and Steward Malta Ltd represented and warranted to the BOV that the obligations expressed to be assumed by parties to Transaction Agreements were legal, valid, binding and enforceable obligations.

3.4.76 The parties to the Agreement agreed, acknowledged and confirmed that:

a. if, by way of any applicable law or any final order, judgement, decision, notice, decree or any other instrument of any public body or otherwise, any of the Transaction Agreements were wholly or partially rescinded, terminated, declared to be null or void or invalid, withdrawn, annulled, cancelled, repealed or quashed, this was to be deemed a non-rectifiable government event of default;

b. the Government's obligations in terms of termination clauses in the SCA and in the HSDA were to be due to the BOV until all the secured obligations were discharged in full;

c. the SCA's definition of 'public bodies' was to be deemed to include:
   i. the Government, any subdivision thereof, or any local governmental authority with jurisdiction over the project or any part thereof or any Concessionaire,
   ii. or any department, authority, instrumentality, agency, or judicial body of the Government, or any such local governmental authority,
   iii. courts and tribunals in Malta or any other judicial, executive or quasi-judicial authority or body, and
   iv. any commission or independent regulatory agency or body having jurisdiction over any Concessionaire, the project or any part thereof.

3.4.77 All other provisions of the Third Amended and Restated Direct Agreement remained as stated in the Second Amended and Restated Direct Agreement.

3.4.78 The implication of the broadening of what was to constitute a government non-rectifiable event of default was that, in the case of court-declared nullity of the concession agreement, the Government would be liable to pay the Concessionaire €100,000,000 and the sum of the lenders' debt incurred. The NAO sought the views of the Prime Minister regarding the implications of Cabinet's endorsement of this liability assumed by the Government. The Prime Minister maintained that he became aware of the Government's role as guarantor in this respect only when legal action was lodged by the Leader of the Opposition. Further context was provided by the Prime Minister in that the BOV had insisted on a guarantee to be provided by the Government required as a safeguard for the Bank in the event of court-declared nullity of the concession. According to the Prime Minister, the Government consented to this guarantee so that in the case of an authority terminating the concession, the Government could step in for the SHC. This arrangement was acceptable to the BOV and the Prime Minister since the SHC would be compensated and its role in the concession come to a close. The Prime Minister contended that the applicability of this provision did not extend to instances of default attributable to the SHC.

3.4.79 In submissions to the NAO, the Minister for Health recalled that the Minister for Tourism had informed Cabinet that the SHC had obtained a loan from the BOV to finance the construction of the Barts Medical School and that the Bank sought a guarantee of the loan from the Government. The Minister for Health asserted that Cabinet was not aware of the implications of the agreement that was to be entered into – other than the role of guarantor that the Government was to assume for the sums indicated – for the Minister for Tourism failed to highlight the broadening of the risk borne by the Government, now liable to pay the Concessionaire €100,000,000 and the sum of the lenders' debt in the case of court-declared nullity of the concession agreement.

3.4.80 The MFH informed the NAO that the Ministry was unaware of the developments leading to the Government's assuming of the €100,000,000 liability in case the concession was legally declared null. Elaborating on the implications of this development, the MFH contended that its ability to seek redress for defaults arising from failures of the SHC to honour its obligations was limited, fearing that such action by the Ministry could result in a court-declared nullity of the concession, thereby triggering the payment of the €100,000,000 liability and the lenders' debt. The MFH estimated the Government's total exposure at €200,000,000. Of note to the NAO was that stated by the PS MFH, in that such an eventuality did not solely bear impact on the Government's finances, but also affected service provision in its broadest sense, highlighting concern as to the possible disruption of public health services should such a situation materialise.

3.4.81 Of interest to the NAO was testimony given by the PS MFIN in court proceedings relating to the legal action instituted by the Leader of the Opposition for the annulment of the Emphyteutical Deed and for the hospitals to be returned to the Government. The PS MFIN testified that he was not involved in the Government's provision of these guarantees, despite that it was ordinarily the responsibility of MFIN to issue guarantees on behalf of the Government. Nevertheless, the PS MFIN challenged the notion that the facility provided to the SHC by the BOV constituted a government guarantee yet conceded that it was a contingent liability of the Government. Given the Government's evident role as guarantor in this and other agreements between the SHC and the BOV, the distinction made by the PS MFIN was not evident to the NAO.

3.4.82 Having reviewed the Direct Agreement and the Amended and Restated Direct Agreements entered into by the Government, Steward Malta Management Ltd, Steward Malta Assets Ltd, Steward Malta Ltd and the BOV on 22 June 2018, 13 November 2018, 17 July 2019 and 27 August 2019, the NAO sought to assess whether the Government's role as guarantor to the SHC for financing made available by the BOV was vetted from a state aid perspective. This assumed greater relevance following entry into the Third Amended and Restated Direct Agreement, as the implication of this Agreement was the broadening of what was to constitute a government non-rectifiable event of default, now including court-declared nullity of the concession agreement, which meant that the Government would be liable to pay the Concessionaire €100,000,000 and the sum of the lenders' debt incurred should such a situation materialise. Within this context, the NAO enquired whether the views of the SAMB were sought by the Government. Despite enquiries made by the NAO with the SAMB, no replies were forthcoming. As a result, doubts persist as regards the possible breach of state aid regulations.

Cabinet excludes alienation of the sites

3.4.83 Cited in the minutes of a meeting of Cabinet held on 10 September 2019 was that the Minister for Health informed Cabinet of the discussions underway between the Government and the SHC arising from the need to amend certain provisions of the concession's contractual framework. The Minister for Health explained that these discussions were being held with the participation of and in consultation with MFIN; however, discussions were being led by the Minister for Tourism in view of his responsibility for Projects Malta Ltd. The envisaged changes, aimed at improving service provision and safeguarding the national interest, could have a bearing on Government expenditure in relation to health. The Minister for Health indicated that, should this be the case, agreement for a separate allocation of additional funds by MFIN has been reached. He explained that an inter-ministerial decision had been taken whereby, in any event, the sites assigned through the concession were to remain Government property and that these were not to be transferred to a real estate investment trust now owned by the Government. Cabinet approved that proposed.

3.5 The memorandum of misunderstanding

3.5.1 On 27 September 2019, the Minister for Tourism submitted a memorandum to Cabinet titled 'Hospitals Concession – Clarification Discussions'. Reference was made to the Cabinet meeting held on 10 September 2019, during which Cabinet was informed by the Minister for Health that the Government and the SHC were currently engaged in discussions intended to clarify certain aspects of the transaction documents and to simplify other aspects of the documents that had proven to be impractical on application, and which, to a certain extent, had created an impasse between the parties.

3.5.2 Stated in the memorandum was that, with a view to overcoming this stumbling block, the parties decided to first reach agreement on certain fundamental commercial principles, which would then serve as the core for clarifying the relevant aspects of the transaction documents. To this end, an MoU was drawn up and executed. The MoU was formulated by a team composed of representatives of the MFH and the MOT, together with specialist consultants.

3.5.3 Acknowledged by the Minister for Tourism was that the MoU, while non-binding in nature, was intended to serve as the basis for more efficient and expedient discussions between the parties, which would ultimately lead to the required clarification of legal matters in the transaction documents.

3.5.4 The MoU, dated 22 August 2019, was appended to the memorandum submitted to Cabinet and was signed by the Minister for Tourism and the CEO SHC International. Stipulated in the MoU was that it represented the high-level principles to be agreed between the SHC and the Government with a view to creating concession documents based on a fair and reasonable package for providing healthcare services. In addition, the MoU was intended to allow for practical adjustments to be made to the concession terms to provide a viable enterprise proposition for the parties to deliver value for money transactions. Several subjects were addressed in the MoU, namely, the general principles that ought to regulate the concession, clarification as to the allocation of funds, the transition period, revenue and payments, issues arising in relation to the LSA, the Orthotics and Prosthetics Unit (OPU), drugs and consumables, the financial model, the performance bond, share capital, the parent company guarantee, the Concessionaire's accounts, the Barts Medical School and the nursing college, VAT and National Insurance (NI) due, capital expenditure incurred, and matters relating to the concession's classification by Eurostat. Further details relating to the subjects addressed in the MoU are presented in Figure 8.

Figure 8 | Subjects addressed in the MoU, 22 August 2019

Subject	Details [milestone]
General principles	These amendments were being recommended without prejudice to and with strict adherence to the provisions stipulated in the SCA, the HSDA, the LSA and the Emphyteutical Deed. The parties were to endeavour to complete the agreements by 30 September 2019.
Allocation of funds	The following recommended transactions were to be financed through a supplementary vote allocated under the MFH. [30 November 2019]
Transition period	The transition period would extend till the end of July 2023. To ensure the maintenance of the level of service required during this period, the Government was to commit to an increase in the charges of 9 per cent per annum, effective as at the beginning of 2019. [1 January 2019] New agreed milestones were to be provided by the SHC following the preparation of designs. The concession documents were to be adjusted to take into account the amended milestones. [30 June 2020]
Revenue and payments	As cash flow was predicted to remain negative intermittently during the transition period, payments by the Government were to be on time and reliable. Control environment checks were to be agreed and implemented.

Subject	Details [milestone]
LSA	Under the LSA, the SHC claimed a shortfall of approximately €8,000,000 for 2016 to 2018. Based on an audit report, the Government agreed to pay €4,300,000, while the remaining €3,700,000 was to be settled after the submission of supporting documentation or further verification. [30 September 2019] The SHC was to present draft audited financial statements for 2017 and 2018 and all transaction histories to ensure Government's full visibility of the application of funds. [mid-October detailed drafts]
OPU	Funds made available by MFIN, amounting to €1,450,000 per annum, were to be transferred to the SHC. These fees were to increase by 9 per cent per annum from the date of commencement of the service. [30 September 2019]
Drugs and consumables	Whatever was to be consumed by the SHC as procured by the Central Procurement and Supplies Unit (CPSU) (up to €5,000,000) was to be free of charge to the Concessionaire during the transition period. The CPSU was to commit to procure as instructed by the SHC. [15 June 2016] Strict control protocols were to be adopted in line with the Government Formulary List. No other medicine or consumables purchased by the SHC without Government's prior consent would be reimbursed. During the transition period, the SHC was to be reimbursed for increases in unit costs of drugs and consumables by applying a nine per cent increase per annum. The SHC was not to be reimbursed for pharmaceutical and medical supplies consumed from the completion date onwards. The new payment mechanism was to be based on unit costs, including pharmaceutical and medical consumption expenses, incorporated on a full absorption basis. [31 July 2023]
Financial model	The SHC and the Government were to work on a financial model based on activity costs incurred in the national health service (including depreciation, that in part was reflected through capital recovery), thereby providing an element of comfort regarding good governance. [30 September 2019] The mix between activity and capacity-based rewards was intended to optimise the performance of service delivery. The health tourism service provision was to be incorporated in the overall returns by the SHC, with provisions to ensure an equitable distribution of profits.
Performance bond	The Government required that the SHC was to immediately provide a performance guarantee as required by the SCA. [1 January 2020] This commitment was not subjective to any other clause of the MoU.
Share capital	The SHC was to increase share capital to €2,000,000. [immediate]
Parent company guarantee	The Government required the submission of a parent company guarantee by the SHC as dictated in the concession agreements. [1 January 2020]
Accounts	Draft accounts were to be prepared in accordance with the International Financial Reporting Standards and were to be made available for review by the Government. [mid-October]
Barts Medical School and nursing school	The agreement to build the Barts Medical School and establish/administer a nursing school was to be transferred to a separate contract, subject that the Government's ownership rights did not change. [30 September 2019]

Subject	Details [milestone]
VAT and National Insurance	The SHC was in discussions to settle the acquired and current liabilities with the Office of the Commissioner for Revenue. Current VAT and National Insurance dues were to be settled immediately, while a repayment plan for previous years' liabilities was to be agreed with the Office of the Commissioner for Revenue. [30 September 2019]
Capital expenditure (capex)	The Government required details of all capital expenditure incurred to date and evidence of the SHC's sourcing for project contributions. [30 September 2019]
Eurostat	Both parties were to endeavour to effect clarifications to the transaction documents as required to ensure that the project was classified as a PPP as defined by Eurostat, meaning that it would be off the balance sheet of Government.

3.5.5 Specific reference was made to the point in the MoU relating to the Barts Medical School and the nursing college. Noted in the MoU was that the agreement to build the Barts Medical School and establish and administer a nursing college would be transferred to a separate and distinct contract with a suitable vehicle agreed by the parties, subject that the Government's ownership rights stipulated in the concession agreements did not change. Clarified in the memorandum to Cabinet was that its decision during the meeting held on 10 September 2019 referred to those parts of the concession immovables from where the national health service was rendered and did not include the medical school.

3.5.6 In conclusion, the Minister for Tourism noted that given that the clarification of limited aspects of the transaction documents was critical to ensuring that the concession progressed to the next stage, Cabinet was requested to endorse the principles set out in the MoU.

3.5.7 On 1 October 2019, Cabinet approved the memorandum titled 'Hospitals Concession – Clarification Discussions' put forward by the Minister for Tourism on 27 September 2019. Noted in the relevant excerpt to the minutes was that the Minister for Tourism had provided detailed explanations of all that had happened and that expected to take place in the projects that were being undertaken by the SHC.

3.5.8 Recorded in the minutes of a Cabinet meeting held on 8 October 2019 was an intervention by the Minister for Finance, who referred to Cabinet's discussion and endorsement of the memorandum put forward by the Minister for Tourism in the preceding meeting. The Minister for Finance sought to render more precise, for the benefit of Cabinet, that the payments referred to in the MoU were not to be made to the SHC prior to its signing.

3.5.9 Further elaboration on that clarified by the Minister for Finance in the preceding Cabinet meeting regarding the MoU between the Government and the SHC was provided in a meeting of Cabinet held on 15 October 2019. The Minister for Finance noted that the Government could not disburse funds unless the additional disbursement, over and above that originally agreed, was backed by a signed agreement. Cabinet discussed this matter, and it was ultimately clarified that the MFH would be undertaking the relevant calculations to establish the amount due. Once this process was completed, the matter would be referred to Cabinet.

3.5.10 An element of context to the MoU was provided to the NAO by the PS MOT, who highlighted the status quo that limited any progress being registered, with the SHC contending that the concession was not bankable and was unworkable, and the MFH asserting that proposals put forward by the Concessionaire were not addressing the Ministry's concerns. In an attempt to move forward, there was an effort, also driven by the OPM to crystallise progress, in the form of an MoU. According to the PS MOT, the MoU was to serve as the basis for the later revision of certain provisions in the contractual framework and emphasised that the principles were agreed to, including that relating to the payments that were to be made by the Government to the SHC.

3.5.11 The PS MOT informed the NAO that the MoU was drawn up with significant involvement of the MFH, which Ministry intended for the Memorandum to serve as the basis against which concession-related payments by the Government to the SHC could be effected. However, the non-binding nature of the MoU as endorsed by Cabinet proved to be a concern to the MFH. The PS MOT indicated that another version of the MoU was submitted to Cabinet for endorsement, which version was to be legally binding. Nevertheless, this version of the MoU was not approved by Cabinet as other political developments ensued.

3.5.12 In submissions to the NAO, the Prime Minister indicated that the MoU was drafted by the MFH and that consensus had been reached. However, the PS MFH informed this Office that there was internal resistance, within the Government, to the MoU being approved. The perspective of the MFH with respect to the MoU is presented in detail from paragraph 3.5.33 onwards.

3.5.13 The NAO was not provided with any documentation by the Government that would have allowed the Office to obtain insight into the developments that resulted between the parties following Cabinet's endorsement of the MoU. However, a glimpse into the progress that was registered was obtained from information and correspondence made available by the SHC.

3.5.14 The SHC informed the NAO that several meetings were held with the representatives of the Government between October and November 2019, intended to render the concession bankable. On the part of the SHC, its main representatives heading negotiations were the CEO SHC International, the Executive Vice-President Global Operations, and its several legal advisors. According to the SHC, the main interlocutors on behalf of the Government were the Prime Minister and the Minister for Tourism; however, the involvement of the Chief of Staff OPM, other ministers and permanent secretaries was acknowledged.

3.5.15 At a high level, this period of negotiations mainly focused on the possibility of the SHC granting, through sub-emphyteusis, certain portions of the sites that it held in terms of the concession to Medical Properties Trust Inc. The SHC maintained that ownership and oversight would have been retained by the Government and that this arrangement would have provided it with the necessary working capital to re-invest in the concession, while the Government's interests would have been protected through its rights of oversight. Notable progress was registered by the SHC in terms of the agreement it had reached with the Medical Properties Trust Inc., which was to be brought for the consideration of Cabinet on 26 November 2019. The SHC asserted that the proposal for the sub-letting of the sites was strongly endorsed by the Government, Malta Enterprise and the BOV, and the SHC was given strong indications that Cabinet approval would be granted.

3.5.16 The status of efforts to restructure the concession agreements was also captured in an email dated 22 November 2019 submitted by the SHC legal advisor to Camilleri Preziosi Advocates, now assisting the Ministry for Tourism. In copy were the PS MOT, the CEO SHC International and several other officials of the SHC as well as its legal advisors.

3.5.17 Noted in this email was that the concession agreements were to be finalised over the next few days for Cabinet approval to be sought on 26 November 2019 and signing of the agreements to occur by not later than 12 December 2019. The SHC legal advisor attached the latest draft documents and highlighted the status of several key issues, summaries of which are reproduced hereunder:

a. Regarding the sale and leaseback of the Barts Medical School, the parties had concluded arrangements with the Medical Properties Trust Inc. and only relevant signatures were required. Reference was also made to the need to enter into a short-term lease agreement to regulate occupation of the site until definite contractual arrangements were entered into. The documentation required for the transaction with the Medical Properties Trust Inc. was to be finalised in time for signature by no later than 12 December 2019.

b. Reference was also made to an MoU that was to be entered into by the Government and the SHC, which set out the key commercial positions agreed to take the project forward. Cited by the SHC in this correspondence was that the only outstanding matters under consideration by the Government were the treatment of escalation and the definition of the transition period.

c. The concession agreements were also revisited. In relation to the HSDA, a revised draft was issued by the SHC. Most changes related to the service levels and requirements and payments. Regarding the SCA, most issues concerned the passage of time on the project and the address of bankability concerns. No changes were proposed with respect to the LSA; however, certain amendments could arise from changes to payments made under the HSDA.

3.5.18 Cited in the correspondence of 22 November 2019 was the proposed way forward. The parties agreed that a meeting would be held on Sunday 24 November 2019 at the OPM or the MOT and work on through to Tuesday 26 November 2019, as required.

3.5.19 The NAO sought to understand the perspective of the SHC and the MFH as regards to what each party intended to address through negotiations. The concerns as perceived by each party are put forward in the ensuing paragraphs.

The perspective of Steward Health Care

3.5.20 The SHC challenged the assumptions on which the granting of the concession was based. The criticism levied at the adopted model was twofold. First, the SHC contended that the projections cited by the VGH were not feasible. Second, the broader economic growth that set the context to the submission by the VGH and the envisaged substantial revenue to be generated through medical tourism were unrealisable.

3.5.21 Elaborating on that which rendered the concession not bankable, the SHC referred to the provisions of the HSDA and the LSA, entered into on 30 November 2015 and 8 January 2016, respectively. Based on cost data provided by the Government to the VGH, the HSDA had set an initial budget of €51,000,000 for 2016. The existing bed structure implied that the €51,000,000 budget accounted for a €600 charge for each acute bed day and a €180 charge for each long-term care bed day (Figure 9 refers).

Figure 9 | HSDA budget to bed rate prior to the completion date

Bed type (as at 2016)	Number of beds	Days	Rate	Budget
GGH acute care	100	365	€600	€21,900,000
GGH long-term care	173	365	€180	€11,366,100
KGRH long-term care	272	365	€180	€17,870,400
Total				**€51,136,500**

3.5.22 The SHC affirmed that the Government and the VGH had agreed to pay the €51,000,000 budget until the completion date of the new and refurbished hospitals, which sum was to be revised upwards on a yearly basis by the annual healthcare budget increase, estimated at approximately 10 per cent annually. Although the VGH envisaged realisation of the completion date by 2018, the SHC contended that this target was never to be deemed realistic.

3.5.23 With respect to payments arising post-completion, the parties agreed that the Government would be charged based on available beds. Rates per bed and day were to be charged as follows:

a. the number of acute care beds at the GGH were to be increased to 125, with the €600 rate revised upwards by two per cent annually from 2016 onwards;

b. the number of long-term care beds at the GGH were to be increased to 175, with the €180 rate revised upwards by two per cent annually from 2016 onwards;

c. the number of long-term care beds at the KGRH were to be increased to 320, with the €180 rate revised upwards by two per cent annually from 2016 onwards; and

d. new provided rehabilitation beds at the SLH were to be charged to the Government at a rate of €300, which rate was to be revised upwards by two per cent annually from 2016 onwards.

3.5.24 As regards the LSA, the parties agreed that the Government would provide the resources – unspecified in number at the point of entry into this Agreement – and that the VGH would reimburse the Government for all salaries. The reimbursed salaries could be revised upwards by two per cent each year. The SHC referred to the RSM report dated 16 September 2016, which established that salary payments were much higher than originally projected. For this reason, the SHC argued that the concession was immediately in default. The RSM report identified that the parties had agreed on staff costs of €39,700,000, while the projected costs amounted to €49,100,000. The impact of this miscalculation arising from cost and headcount information provided by the Government to the VGH was approximately €10,000,000 (Figure 10 refers).

Figure 10 | LSA variance

Budget	2016 cost	Percentage	2016 cost corrected	Variance
Staff costs incl. contracted workers	€39,742,964	78%	€49,110,729	€9,367,765
Other costs	€11,257,036	22%	€11,257,036	€0
Total	**€51,000,000**	-	**€60,367,765**	**€9,367,765**

3.5.25 The SHC maintained that the miscalculation of costs was not limited to staff costs and argued that other costs were similarly underestimated. According to the SHC, hospitals with high staff costs commonly had an ‘other costs’ component that exceeded 35 per cent, whereas in the case of this concession, other costs were resultantly estimated at 22 per cent. The SHC argued that taking into account real staff costs would result in a share of other costs that was less than 20 per cent. Moreover, the SHC stated that the €11,000,000 in other costs did not include any costs relating to information technology (IT), interest, depreciation and management fees.

3.5.26 To address the issues that arose in relation to the deployment of staff, an Addendum to the LSA was entered into by the Government and the VGH on 30 June 2017. Estimating the cost of contracted workers at €6,000,000, the parties agreed to introduce a capping for the LSA charge, which was set at €32,200,000 effective from 1 June 2017. This capping was to be increased by two per cent annually. Through the Addendum, the Government now bore an obligation to always provide 1,536 resources to the VGH. Moreover, a mechanism of reimbursement for resources not provided by the Government was introduced. According to the SHC, the Government did not fulfil its obligation to provide these resources and argued that the resulting shortfall increased year-on-year. The SHC was constrained to address these gaps through its own resources, for which claims for reimbursement were made. Nonetheless, the SHC maintained that the Government had, for a long time, refused to settle such claims. Eventually, the parties resolved this matter through a settlement agreement, with the Government paying relevant dues up to Q1 2021.

3.5.27 Elaborating on the current situation, for reasons cited in the preceding paragraphs, the SHC argued that the concession was underfinanced between 2016 and 2019. The SHC maintained that, since its takeover of the concession in 2018, operational costs were covered by the budgetary allocation, which situation was possible due to the strict cost management measures implemented and the annual budgetary increase of eight per cent payable during the pre-completion phase. Nevertheless, the SHC contended that no budget was allocated to finance the investment required exceeding €200,000,000.

3.5.28 The SHC anticipated that the situation would not be rectified post completion. The reasons cited in this respect were that the daily rates per bed were based on the miscalculated budget of €51,000,000, which rate was to be increased by two per cent annually from 2016, as opposed to the eight per cent increase contemplated during the transition period. The SHC argued that the resulting daily payment per bed post completion would be less than that presently secured, that is, during the transition period. Furthermore, the capping on the LSA meant that costs incurred for the engagement of the additional resources required to cater for increased capacities would not be covered. In sum, the SHC contested that the initial budget was underestimated, investment costs were not included, and that the two per cent increase was unrealistic, more so when, to the SHC's knowledge, the MDH registered cost increases of six per cent annually between 2016 and 2020.

3.5.29 From a broader perspective of reflection, the SHC sought to rationalise its decision to take control of the concession. Setting aside the commitments by the Government to restructure the concession, the SHC stated that this decision was deep-rooted in its assumption that the Government, particularly the MFH, acted responsibly on its duty of care and its duty to provide oversight. The SHC maintained that this assumption was legitimate, considering that it was dealing with a government and that the Government was effecting regular payments to the VGH despite the multitude of deviations and irregularities. Given the extent of these deviations and irregularities, the SHC contended that the Government must have been aware of the situation.

3.5.30 The SHC referred to the Government's duty of oversight over the VGH, to the fact that payments were regularly made, and that defaults by the VGH were never called. In this context, given the extent and gravity of the liabilities encountered after taking over, the SHC concluded that the Government deliberately failed to disclose these deficiencies. According to the SHC, the Government's failure to disclose and its breach of the commitment to restructure the concession resulted in the prevailing impasse. The SHC indicated to the NAO the key liabilities and wrongdoings that characterised the concession prior to it taking over. These comprised the VGH's:

a. failure to raise the required project financing at award and thereafter;

b. accruing of accumulated liabilities, working capital deficit and other claims totalling €62,000,000 over 18 months;

c. collateralisation of at least 59 per cent of the VGH in shares and share options, with no clarity as to the value added to the company or what the funds thereby generated were used for;

d. entry into two liens on the VGH by the engineering, procurement and construction contractor and a bank;

e. inability to cover salaries from operations;

f. failure to prepare management accounts or file annual statements;

g. failure to pay €2,900,000 in National Insurance and payroll tax due;

h. failure to pay VAT and other taxes, amounting to €9,000,000;

i. acquisition of non-core assets, such as Technoline Ltd and MTrace plc, from Government funds designated for operations and salaries;

j. recruitment of non-essential corporate personnel, such as the Director of Hospitality Services;

k. lease of a fleet of luxury corporate vehicles and the rental of numerous high-end apartments;

l. entry into an engineering, procurement and construction contract that was not workable;

m. limited progress on capital works, with only excavation works carried out at the site intended for the construction of the Barts Medical School;

n. obscuring of its ownership through multiple layers of offshore companies registered in the British Virgin Islands;

o. movement of its holding companies to Jersey after its British Virgin Island holdings came under increased scrutiny;

p. granting of ownership shares to multiple entities to acquire capital and credibility; and

q. establishing, through screened companies and layers, exclusive contractual binds with hospitals and other companies to facilitate franchising.

3.5.31 The SHC asserted that in view of the above and pursuant to the SCA, the Government should have taken action against the VGH for breach of warranties, breach of multiple obligations and, ultimately, default. However, the SHC observed that there was no record of any action by the Government against the VGH. On the contrary, quarterly payments continued to be made on time.

3.5.32 Given the inherent risks that characterised the concession, the NAO enquired as to what considerations provided the SHC with comfort that the challenges faced could be surmounted. The SHC conceded that the risks inherent in the concession could not be overcome, as these risks effectively persisted. However, the SHC argued that its entry into the concession came with an understanding that a new set of financial parameters would be negotiated and with the legitimate expectation that the concession would be restructured.

The perspective of the Ministry for Health

3.5.33 The NAO sought the perspective of the MFH in relation to key issues that arose during this round of negotiations. In submissions to this Office, the Minister for Health indicated that the main elements of negotiation proposed by the Government to the SHC sought to achieve the reclassification of the concession as an off-Government balance sheet entry. Key in this respect were two matters. First was that, instead of lump sum payments, the Government would compensate the SHC for services rendered. To enable this transition, the MFH sought to establish the cost of all items of the concession, which process was undertaken by a group of experts appointed by the Ministry and led by the Consultant MFH. Second was that, on completion of the project, the MFH would pay the SHC for occupied beds rather than for all beds available. The Minister for Health acknowledged that these provisions diverged from that regulated in the concession and it was in this sense that the negotiations were framed.

3.5.34 In turn, the MFH asserted that the changes put forward through the MoU would have increased the risk borne by the Concessionaire by decreasing its guaranteed revenue, as the proposed revised payment structure included a fixed fee and payments determined by activity levels. Although the risk borne by the SHC was to increase, the Concessionaire had the opportunity to secure additional income by increasing activity levels. The MFH argued that these changes would have better allocated the risk and rewards of the concession and contributed to the classification of the project as an off-Government balance sheet entry. Other aspects discussed included the performance guarantee, the increase of the share capital and the payment of NI contributions, the bankability of the concession and the restructuring required by the SHC.

3.5.35 However, an issue that remained contentious was the setting of the annual inflation rate that was to determine revisions to the amounts payable by the Government. The SHC sought to establish this rate at nine per cent per annum. The MFH contested the applicability of this rate and claimed that were this to be applied, this would not only be applicable to the fees payable to the Concessionaire but extend to the labour costs charged by the Government.

3.5.36 In further submissions by the MFH to the NAO, the Ministry highlighted its grave concern regarding the effect that the proposed annual nine per cent revision to the payment to be made by the Government to the SHC would have on public finances. The MFH contended that a nine per cent annual increase, when compounded, would have resulted in the doubling of the amount payable by the Government to the Concessionaire within seven years. This situation was deemed unacceptable by the MFH, who contended that similar concerns were raised by MFIN. Aggravating matters was that the MoU did not clearly specify the period of applicability of this increase and that this revision did not apply to the labour cost element payable by the SHC to the Government, which would have mitigated the overall disbursement by the Government resulting from this increase. Although the MFH resisted the nine per cent increase contemplated in the MoU, the Ministry lamented that the existing concession agreements and the revisions in payments to be made to the SHC regulated therein presented its own challenges and was not far off the nine per cent rate indicated in the MoU. Elaborating in this respect, the MFH noted that the concession agreements stipulated that the Ministry was to compensate the SHC with the relevant annual healthcare budget percentage increase – equivalent to an approximate eight per cent – despite that certain components of the healthcare budget were outside the scope of the concession. The MFH informed the NAO that the nine per cent revision to the amount payable by the Government to the SHC remained a point of contention throughout this phase of negotiation.

3.5.37 The MFH indicated that the SHC was restricted by the obligations imposed to provide certain services that were unsustainable. Elaborating in this respect, the MFH noted that the Concessionaire had an obligation to invest in a cardiac catheterisation laboratory and charge a unit cost for each patient. However, the number of cases seen in Gozo did not justify the substantial investment that needed to be made. Similarly flawed was the original inclusion of oncology, brain surgery and paediatric cardiac surgery specialisations at the GGH. These inclusions rendered aspects of the contract as commercially unviable, since it required the SHC to make substantial investment for services with low uptake – an issue that would have been flagged by financial institutions when considering the financing of the project. The MFH incisively argued that service requirements should have been identified in detail prior to the issuance of the RfP; however, this exercise was undertaken at a later stage. At the RfP stage, there was limited involvement of officials responsible for the operations of the hospitals, which resulted in poorly defined requirements by the Government, and therefore decisions by the Concessionaire may have been based on financial considerations or assumptions on future developments that were unimplementable or unsustainable. According to the MFH, the SHC was likely promised that certain provisions would be amended; however, not all materialised.

3.5.38 Another aspect deemed unfeasible by the SHC was medical tourism. The MFH referred to the fact that when the VGH was originally granted the concession, medical tourism was the focal point of its business model, for it was to render the project viable and profitable. Nonetheless, the MFH acknowledged that there existed real clinical obstacles to the commercialisation of medical tourism. In addition, difficulties in terms of industrial relations were envisaged, partly emanating from the mixing of public and private patients in the same wards that would inevitably create the setting where the Government-paid employees would be rendering services to fee-paying patients of the Concessionaire. Although the segregation of patients was discussed, according to the MFH, the SHC opposed such an arrangement. Aside from constraints relating to clinical elements and industrial relations, the fees that would be charged to render such services were deemed prohibitive by the MFH, as they would have been more in line with high-end destinations rather than an emerging market as would have been the case with Malta.

3.5.39 A contrasting perspective regarding the feasibility of medical tourism and its relevance to the concession was expressed by the Minister for Health in submissions made to the NAO. The Minister for Health contended that Malta had significant potential for the development of medical tourism. According to the Minister for Health, when the concession was initially presented to him, the concept was that the project could only be feasible if the medical tourism component was developed. Notwithstanding this, the Minister for Health indicated that the SHC was not interested in medical tourism, with the Concessionaire seeking that the project be funded entirely by the Government. The Minister for Health argued that the concession without medical tourism was not feasible and therefore not bankable. Elaborating in this respect, the Minister for Health maintained that the SHC was a reputable firm; however, it did not operate a medical tourism model within any of its hospitals. Instead, the SHC's model was centred around the provision of health services to local communities, which model it sought to adopt in this concession. Nevertheless, the Minister for Health indicated that this community-based model was not that envisaged in the concession agreements. According to the Minister for Health, this was the crux of the problem, with the SHC's request for the Government to alter the model to suit its preference deemed unacceptable in light of public procurement regulations.

3.5.40 In terms of the SHC's financial performance, the MFH expressed scepticism as to how the Concessionaire was registering losses considering the payments made by the Government, which payments were augmented on several occasions to account for inflation, budgetary increases, compensation for pharmaceuticals and other ad hoc increments. All these payments were to be considered against the lack of investment being made by the SHC. A costing exercise cited by the MFH indicated that the fixed fee payable to the SHC was sufficient to cover the costs incurred were the Concessionaire to operate with a cost base comparable to the MDH. However, the MFH contended that since the cost base of the GGH and the KGRH was lower than that of the MDH, the SHC could secure a profit. In the MFH's understanding, the doubt that persisted was whether this profit was sufficient to cover the Concessionaire's capital repayment costs and other commitments.

3.5.41 The MFH asserted that a project that is not bankable, and therefore does not render adequate profit, would result in the Concessionaire regularly raising claims to obtain additional funds, which situation had already arisen in relation to the concession awarded to the SHC. Notwithstanding the above, the MFH maintained that the SHC had never specifically explained why the concession agreements were not bankable.

3.5.42 Documentation dated October 2019 provided by the MFH regarding the financial and statistical implications of the hospital concession captured several of the points raised by the Ministry in the above paragraphs. Capturing the progress in negotiations registered to date, noted in the document was that the Government and the SHC had resolved that the 2016 benchmark cost of services was estimated at €87,000,000. Of this amount, 56 per cent was associated with the availability of capacity, while the rest was to be based on activity. Several assumptions relating to the computation of the project's internal rate of return were considered, key in securing the required capital investment by the SHC and in establishing the amounts payable by the Government. The requirements for the off-balance sheet statistical treatment of the project were also identified. The risks faced by the project were to be mitigated by availability payments being guaranteed for two years on a successively renewable basis and with the Government guarantee on debt being replaced by a step-in clause activated under particular scenarios. Attention was also

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drawn to all the issues highlighted by Eurostat in its classification of the concession as on-balance sheet and how the MFH intended to address such matters through contractual amendments.

3.5.43 Despite the parties' intention to work towards the conclusion of negotiations by end November 2019, the NAO was not provided with any evidence that the concession agreements, as revised, were referred for the endorsement of Cabinet. The likely explanation for this is that the Government's attention was at the time diverted to more pressing matters, with efforts intended to conclude the renegotiation of the concession taken over by events. This understanding was confirmed by the Prime Minister.

3.6 The first attempt to restructure the concession is taken over by events

3.6.1 On 26 November 2019, the Minister for Tourism resigned. This resignation was shortly followed by that of the Prime Minister, who resigned on 1 December 2019.

3.6.2 The NAO enquired with the Prime Minister whether he was involved in any capacity in connection with this concession following his resignation. The Prime Minister categorically denied any involvement.

3.6.3 In submissions made to the NAO, the SHC noted that, in the context of these resignations, the Government stopped engaging with it on the renegotiation of the concession. The SHC confirmed that the first attempt at renegotiating the concession stalled due to the political upheaval prevalent in Malta at the time, which put this process and several other matters on hold. Notwithstanding this, the SHC continued to explore the possible sub-emphyteusis and leaseback of the sites with the Medical Properties Trust Inc.; however, when it became evident that the political situation in Malta would not settle in the short term, these negotiations were shelved.

3.7 An attempt at discontinuity

3.7.1 On 13 January 2020, the Hon. Robert Abela took office as Prime Minister (hereinafter referred to as the incumbent Prime Minister). According to the Minister for Health, following the change in leadership, the Government sought to take stock of the situation regarding the concession. At this point, the Minister for Health deemed the termination of the contractual arrangement as the most viable course of action, for the SHC's vision for the concession was inconsistent with that of the Government. The Minister for Health maintained that, under such a scenario, the clinical services would continue to be provided and that the Government could directly undertake the capital development required. In internal discussions on this option, the incumbent Prime Minister, the Minister for Finance and the Minister for Health were all in agreement. However, the PS MOT immediately drew their attention to the Third Amended and Restated Direct Agreement and indicated that, should the Government terminate the concession, this could be construed as a government non-rectifiable event of default, in which case the Government would be liable to pay the sum of €100,000,000 to the SHC and assume the lenders' debt. It was at this point that the Government – bar the MOT – became aware of the broader implications of that consented to by Cabinet during its meeting of 27 August 2019. Evident to the NAO, and corroborated by the Minister for Health, was that this awareness constrained the Government's possible course of action in seeking to address the impasse that it faced in relation to the implementation of the concession by the SHC.

3.7.2 The next development relating to the concession, following the change in leadership, that came to the attention of the NAO was an excerpt of the minutes of a Cabinet meeting held on 21 January 2020. According to the minutes, the incumbent Prime Minister explained that aside from matters relating to governance, there were other administrative matters, foremost among which in terms of priority was that relating to the concession held by the SHC. The Minister for Health noted that it was necessary for Cabinet to discuss the provision of another waiver to the SHC, which waiver was to be of a shorter duration than that ordinarily granted. Reference was made to the fact that several waivers of this sort had been granted to the SHC, be it in relation to the performance agreement and in respect of the securing of financing necessary for the project to be undertaken as originally agreed. Intimated at was that the original agreement had been supplemented through several side letters and resulted in an expense that was substantially higher than that originally contracted.

3.7.3 Of note to the NAO was that subsequently registered in the minutes, wherein the Minister for Health expressed his disagreement with the way negotiations were undertaken and agreement reached with the VGH and subsequently with the SHC. Nevertheless, he noted that this waiver was required so that the Government could take stock of the legal situation of the project, its financial standing, and its impact on public funds, so that the necessary decisions on the future of the project could be taken without imperilling employment.

3.7.4 The proposed waiver in relation to the SHC's obligation to submit a performance guarantee and the financing agreements was extended till the end of February 2020. Following discussions on the matter and the provision of relevant clarifications, Cabinet agreed to that proposed.

3.7.5 An element of context to that stated to Cabinet by the Minister for Health, in terms of his objections to the manner in which negotiations were carried out and agreement reached with the SHC, was provided to the NAO by the Minister. In submissions to this Office, the Minister for Health referred to the assertion made by the SHC that the Government assured the Concessionaire that once it assumed control of the concession, the Government would renegotiate to provide more favourable conditions to the SHC. According to the Minister for Health, the Government had not committed to the renegotiation of the concession, and following the change in Prime Minister in January 2020, all negotiations by the Government with the SHC centred on the termination of the concession. The Minister for Health negated that the negotiations and discussions undertaken during this period arose out of any obligation of the Government towards the SHC, entered into at the time of handover, to provide the latter with a concession that was more favourable. Regarding negotiations undertaken prior to 2020 and led by the Minister for Tourism, the Minister for Health conceded that these could be construed in a different light.

3.7.6 Referring to the assurance provided by the Government to the SHC maintained by the latter, the Minister for Health informed the NAO that, despite several requests for documentation of this commitment by the Government made to the Concessionaire, no submissions had been made. The Minister for Health informed the NAO that, in late 2019, he had enquired with the Prime Minister and the Chief of Staff OPM whether there existed any commitment of Government to the SHC for the renegotiation of the concession. Both had verbally informed the Minister for Health that no such commitment was made. It was unclear to the NAO whether the Minister for Health was aware of the correspondence that had been submitted to the SHC by the Minister for Tourism on 25 June 2018. Noted in this correspondence was that "It is the intention of both parties (the Government of Malta and the Concessionaires), which both acknowledge is required, to seek a number of changes to the Concession Agreements, such that the agreements reflect the situation pertaining in 2018, put the Concession Agreements into globally bankable form and deal with other practical matters."

3.7.7 A key departure from decisions previously taken by Cabinet was registered in the minutes of the meeting held on 25 February 2020. Noted in the minutes was that the incumbent Prime Minister introduced the discussion regarding the concession under the control of the SHC and referred to the waiver that had been granted until end February 2020 weeks prior. The incumbent Prime Minister explained the process that had led to this discussion within Cabinet and referred to the meetings held with the officials and consultants that were in some way involved in the concession or were aware of it. In this manner, all facts were brought to the fore and discussed to identify the best possible solutions in all eventualities, while remaining within the parameters stipulated in the contracts.

3.7.8 The Minister for Health provided an explanation as to how the concession was transferred from the VGH to the SHC and indicated that, following the last waiver granted by Cabinet, an element of progress had been registered in that the SHC had submitted its accounts for 2016 and management accounts for 2017 to the Malta Financial Services Authority. Also noted by the Minister for Health was that the submissions presented expenditure that could be deemed dubious. However, the Minister for Health explained that Cabinet was to focus on whether another waiver was to be granted to the SHC, just as that previously afforded was to expire. He elaborated on the implications of the two possible options – whether to grant the waiver, or otherwise – that Cabinet was to decide on.

3.7.9 After lengthy discussions, Cabinet decided that the SHC was not to be granted another waiver. Cabinet acknowledged that the way forward for this concession for the time being was that the parties were to honour the agreements originally entered into and follow developments.

3.7.10 In March 2020, the first cases of COVID-19 were detected in Malta. This undoubtedly resulted in the MFH's attention being drawn to the management, mitigation and address of the spread of the virus. Inevitably, negotiations with the SHC assumed a secondary priority in this period.

3.7.11 Cited in the minutes of a meeting of Cabinet held on 14 April 2020 were further updates relating to the concession held by the SHC. The Minister for Health remarked that this Cabinet – understood by the NAO as reference to the Cabinet under the charge of the new Prime Minister – had not granted the SHC further waivers. He noted that, as envisaged, the Concessionaire did not submit the bond that it was obligated to and therefore was in breach of the contract. However, the Minister for Health noted that the employees were to be paid and medical services to be provided, more so in these times. For this to be possible, the Government had to transfer funds to the SHC. In the meantime, discussions between the two parties were underway. To this end, Cabinet was requested to approve that payment be effected to the SHC until a memorandum was submitted to Cabinet regarding the future of this project. Cabinet approved that proposed.

3.7.12 The SHC informed the NAO that, primarily as a result of the limitations imposed by the pandemic, related lockdowns and other measures, discussions with the Government stalled during this time. These resumed in July 2020.

3.8 A second attempt at restructuring the concession comes to a halt

Renegotiation revisited

3.8.1 A fresh round of discussions relating to the renegotiation of the concession commenced in mid-2020. According to the SHC, this negotiation attempt was wider than that previously undertaken. The ultimate objective was that of providing the Maltese public with a high-quality health service and the eventual reconstruction and redevelopment of the GGH, the KGRH and the SLH. The SHC understood that the negotiations would render the concession bankable and fulfil the legitimate expectations provided to it by the Government as a condition when taking over Bluestone Investments Malta Ltd.

3.8.2 The SHC informed the NAO that the Government's main interlocutors during this phase of negotiations were the Minister for Health, the Minister for Finance, the PS MFH and the PS MFIN, officials of the Foundation for Medical Services (FMS), including its CEO, and Camilleri Preziosi Advocates in their capacity as the Government's legal consultants. The incumbent Prime Minister was also involved in key negotiation meetings. Negotiating on behalf of the SHC were the CEO SHC International, the Executive Vice-President Global Operations, its several legal advisors and a technical team with expertise in finance, operations and construction.

3.8.3 According to the SHC, initial meetings between the parties were held in July 2020, with particular reference made to a meeting held at the OPM on 22 July 2020. During this meeting, the parties agreed on a set of high-level points of agreement that was to serve as the basis for further discussion.

3.8.4 Records of this meeting retained by the SHC were made available to the NAO. In essence, the concession was to be modified in such a manner so that the land and assets would return to the Government, while the SHC would assume responsibility for the construction-related activities and enter into a long-term management agreement. Moreover, a satisfactory solution was to be identified for the disputed funds and the equity already contributed by the SHC. The three major aspects of discussion identified were the design, build and commission of the sites, the management services agreement and termination.

3.8.5 The SHC was to be responsible for the design, build and commissioning of the GGH, the KGRH and the SLH, as well as the choice and management of the contractor. The Government was to be afforded the choice of an on-balance sheet or off-balance sheet transaction, each bearing financial repercussions. Other aspects highlighted was that the SHC was to charge a developer fee and that a new total budget for the project was to be set. As regards the Barts Medical School, this asset was to return to the Government, with the preferred option of the Government being an outright purchase from the SHC. The anticipated purchase price set by the SHC in 2019 was €35,000,000, which reflected the premium paid in terms of the urgency for completion to retain the QMUL.

3.8.6 The second aspect related to a management services agreement that was to regulate the governance and operational elements of the concession. The proposed term was to be for 30 years and subject to renewal by mutual agreement. The management fee that was to be paid to the SHC comprised three components, namely, a base fee, as well as quality and cost-saving incentives. Several governance-related considerations intended to regulate the relationship between the Government and the SHC were outlined. Matters addressed in this respect included the composition of structures of oversight, reporting arrangements, frequency of meetings and the decision-making parameters that were to guide the appointed structures.

3.8.7 The final aspect of discussion related to termination, wherein three scenarios were envisaged. These comprised: a no cause termination, in which case fixed fees were set contingent on when within the term of the concession the termination occurred; an SHC option for termination, possibly resulting from failure by the Government to effect timely payments, or maintain banking and financial controls as mandated by financial oversight bodies, and the grey or blacklisting by such agencies, among others; and a Government option to terminate resulting from cause attributable to the SHC, including malfeasance or gross negligence, or three consecutive years of qualified financial statements.

3.8.8 After the July 2020 meeting, negotiations continued over the following months, with the SHC making specific reference to meetings held in early September 2020. Discussions intensified over the period October to December 2020. The SHC cited meetings held at the OPM in the week starting 19 October 2020. Although the meetings were not conclusive, the SHC drew encouragement from their outcome, for the parties were at this stage identifying granular details that were to be addressed in the eventual contracts.

3.8.9 To provide the NAO with visibility over the status of negotiations during this period, the SHC made available a joint position paper dated 30 October 2020. Although this document was never formally signed, it captures the high-level principles acknowledged by the parties as reflecting that agreed in relation to a termination agreement and a management services agreement. The salient issues addressed in the joint position paper included provisions relating to termination, service delivery, conditions of employees, budgeting, payments, KPIs, the procurement of supplies and equipment, and the performance guarantee. This paper served as the basis for the draft agreements eventually referred for the consideration of Cabinet, details corresponding to which are provided from paragraph 3.8.17 onwards.

3.8.10 The SHC recalled that, at the time, the parties had set an informal deadline of end November 2020 for the conclusion of discussions. Regular meetings were held with the Minister for Health and the newly appointed Minister for Finance and Employment, the Hon. Clyde Caruana, and their respective PSs, as well as satellite meetings of specific working groups, during November 2020. The conclusion of this process led to the drafting of near final agreements for the remodelling of the concession, structured around the ensuing high-level principles:

a. the Emphyteutical Deed would be terminated, allowing for the sites held by the SHC to return to the Government. This implied that the SHC would be relinquishing the remainder of its 30-year emphyteusis and its right to extend this to 99 years;

b. the Government would reimburse and compensate the SHC for costs incurred and improvements carried out on the sites. These reimbursements and compensation were to be regulated by a termination and compensation agreement, which would also address related claims raised by the SHC in connection with the LSA, COVID-19 and additional beds; and

c. the SCA, the HSDA and the LSA would be replaced by a hospital management services agreement and a design and build agreement. Through the former, the SHC would be responsible for the management of the hospitals, whereas in terms of the latter, the SHC would be the contractors for the redevelopment of the sites. The intention behind this reconfiguration of agreements was tied to the often problematic and unclear nature of the original agreements entered into.

3.8.11 Although the deadline of November 2020 was not achieved, the SHC indicated that by early December 2020, the parties were so confident of concluding negotiations and finalising the agreements that 18 December 2020 was formally set as the date for the signing of the renegotiated concession agreements.

3.8.12 According to the MFH, the peak of activity in terms of this phase of negotiations between the parties was registered between mid and end 2020. Of note to the NAO was the MFH's assertion that the Ministry became aware of the €100,000,000 termination penalty payable by the Government to the SHC irrespective of the cause of default early on in this phase of negotiations. Although negotiations between the parties proceeded, in the main led by the

MFH, the termination penalty remained an insurmountable obstacle. The MFH indicated that technical/legal experts were engaged to assess the applicability of this penalty.

3.8.13 Providing further context to the parties' attempts at restructuring the concession, the MFH indicated that diverse aspects relating to the contractual framework were discussed. The key stakeholders acting on behalf of the Government were the OPM, the MFH and MFIN. At some point in negotiations, the focus of discussions between the parties shifted, with emphasis no longer placed on the clinical element of the concession or services that were to be rendered by the SHC in relation thereto. Instead, according to the MFH, the SHC proposed assuming responsibility for the maintenance of the sites.

3.8.14 Pertinent to the context of the discussions being held was that the SHC had failed to secure financing and consequently could not undertake the contracted capital works. Consequently, the Government sought the reversion of the emphyteutical title to the sites, which reversion would have allowed it to assume responsibility for the financing of the project and the necessary construction works.

3.8.15 Notwithstanding the envisaged reversion of the sites to the Government, the parties considered an option whereby the SHC would be tasked with the design and build element of the project and facilities management under two separate contracts. Also considered was the possibility that the SHC be solely assigned the management of the facilities. In the scenario where the SHC assumed the design and build component, the Government would have the title of the land and pay for the relevant capital works. In addition, the Government would reassume direct control over the clinical management of the hospitals. Under this agreement, the SHC would retain four senior executives, namely the CEO, Chief Operations Officer (COO), a Financial Manager and an IT Manager, and be paid an annual fee for the management of the sites. The MFH indicated that discussions were also held regarding the payment of a percentage management fee for facilities management; however, this was not pursued.

3.8.16 The MFH informed the NAO that throughout discussions, the €100,000,000 termination penalty was being negotiated. This penalty was revised downwards several times (to €70,000,000, €50,000,000 and €30,000,000), and eventually the SHC considered its outright waiver. However, such waiver was contingent on the Government agreeing to other claims made by the SHC. It is in this context that the proposed restructuring of the contractual framework regulating the concession was brought to Cabinet's attention.

Seeking Cabinet's authorisation

3.8.17 A memorandum, titled 'Restructured Steward Health Care Agreements', was submitted to Cabinet by the Minister for Health and the Minister for Finance and Employment on 18 December 2020. Cited as background to the memorandum was that, over the past few months, the Government had been reviewing the agreements undertaken with the Concessionaire that had been entrusted with the management of the GGH and the KGRH, and with the preparation and implementation of plans for the building of an acute hospital in Gozo and a rehabilitation facility on the footprint currently hosting the KGRH and the SLH. On the completion of this review, the Government embarked on extensive consultation with the SHC to reach agreement on a fresh contractual arrangement that better suited the Government's ambitions for the acute hospital in Gozo, and that upgraded and expanded the rehabilitation services offered by the domestic healthcare sector.

3.8.18 Noted in this respect was that the renegotiated proposal for a revamped contractual arrangement featured four important milestones, namely, the:

a. Termination, Settlement and Arbitration Agreement;

b. Termination Compensation Agreement;

c. Deed of Emphyteutical Rescission; and

d. Management Services Agreement.

Termination, Settlement and Arbitration Agreement

3.8.19 The parties to the envisaged Termination, Settlement and Arbitration Agreement were to be the Government, Steward Malta Ltd, Steward Malta Assets Ltd and Steward Malta Management Ltd. This agreement was to terminate the existing SCA, dated 30 November 2015, and all related agreements, including the LSA dated 8 January 2016 (as amended by the two side letters dated 19 May 2016 and 15 September 2016) and the HSDA dated 30 November 2015 (as amended by three addenda, two dated 7 December 2015 and the third dated 30 June 2017). The Termination, Settlement and Arbitration Agreement was to release the parties from the obligations as had been established by the concession agreements that were to be repealed. Deemed important in this respect was that, through this Agreement, the Government would be relieved of the responsibility to meet payment liabilities in favour of the SHC and of the BOV, as stipulated in the tripartite agreement with the Bank.

3.8.20 Of equal importance was that the parties agreed that:

a. the Government and Steward Malta Management Ltd were to enter into a Management Services Agreement on or around the date of the Termination, Settlement and Arbitration Agreement, which was to be dated 1 January 2021; and

b. the Government and Steward Malta Assets Ltd were to enter into a Design and Build Contract by no later than 30 September 2021.

3.8.21 The Termination, Settlement and Arbitration Agreement was to allow the Government to purchase the Barts Medical School that had been built by the SHC and to redeem the rights on the land hosting the school. Payment to the SHC would be made based on a financial report prepared by independent experts, which assessment would factor in the savings that the Government was to reap from the repeal of its current obligations to pay the SHC an annuity over a 30-year period as compensation for having overseen and financed the building of the Barts Medical School.

3.8.22 Payment and reversion of the sites to the Government was expected to occur in early January 2021.

3.8.23 Further noted was that the parties to the SCA had been encountering difficulties in reaching a common understanding on key provisions of the LSA and the HSDA. Acknowledged in this respect was that these difficulties curtailed the advantages that the PPP was expected to generate. In fact, several claims had been registered between the parties over the years, some of which had been settled. However, other claims corresponding to the LSA and the HSDA remained outstanding, and it had been agreed that such claims were to be referred to arbitration through the Malta Arbitration Centre for a final decision on the amounts due. The arbitration award was not to be subject to appeal and was to be binding on the parties. It was in this context that the provisions of the original concessionary framework relevant to existing claims in relation to the LSA and the HSDA were to be retained in full force and effect for the purposes of the arbitration to be commenced to determine those claims.

Termination Compensation Agreement

3.8.24 The parties to the Termination Compensation Agreement were to be the Government, Steward Malta Ltd, Steward Malta Assets Ltd, Steward Malta Management Ltd and SHC International Ltd. This Agreement was to constitute a second milestone in the contractual architecture that was being proposed as a replacement to the existing concession agreement. The Termination Compensation Agreement was to cater for the eventuality that the new Management Services Agreement and/or the Design and Build Contract were declared void or ineffective by a court. Furthermore, the Termination Compensation Agreement was to also cater for the eventuality that the agreement between the Government and Steward Malta Assets Ltd on the envisaged Design and Build Contract was not reached by 30 September 2021. The parties agreed that should either of the above-indicated events occur, the original concession agreements were to remain terminated, as per the terms of the Termination Compensation Agreement.

3.8.25 In addition, in the case of a successful challenge, the new agreements entered into would terminate and the Government would be obligated to: pay compensation to the SHC; pay breakage costs due to the sub-contractors that the Government refuses to take over from the Concessionaire, even if the Government is entitled to do so; pay costs and expenses incurred by the SHC in connection with the Design and Build Contract (such as costs for design works, permits, licences and approvals necessary to undertake the works) plus an additional margin to compensate the Concessionaire for foregone profits; and pay for the works carried out under the Design and Build Contract and services provided pursuant to the Management Services Agreement until the date of termination (provided that such costs would not have been paid for by the Government).

3.8.26 In case an agreement was not reached on the Design and Build Contract, the Management Services Agreement would terminate, and the Government would pay the SHC a compensatory sum; would pay the Concessionaire for services provided pursuant to the Management Services Agreement for the period ending 30 September 2021; and would pay breakage costs due to the sub-contractors that the Government was entitled to take over, but refused to take over from the SHC as at 30 September 2021.

Deed of Emphyteutical Rescission

3.8.27 The envisaged parties to this public deed were to be INDIS Malta Ltd, the Government and Steward Malta Assets Ltd. This deed was to provide for the termination of the emphyteutical rights granted to the SHC over the hospital sites by virtue of the deed entered into on 21 April 2016.

3.8.28 However, the SHC would be entitled to remain on the sites as required to perform its obligations and to exercise its rights in terms of a Management Services Agreement.

3.8.29 Any improvements carried out on the sites were to become the property of the Government. Compensation for these improvements was to be provided for in the Termination, Settlement and Arbitration Agreement.

Management Services Agreement

3.8.30 The parties to the proposed Management Services Agreement were to be the Government and Steward Malta Management Ltd. This Agreement was to regulate the provision of non-clinical hospital management services by the SHC for the remaining term of the original concession, that is, until 18 May 2046. More detailed and exhaustive information on the areas of the hospitals' operation that would fall within the Concessionaire's competence were appended to the memorandum to Cabinet. The envisaged services were to include business continuity management, facilities and asset management, general support services, engineering services, HR services for the Concessionaire's employees, specific procurement duties and supply chain management, financial services, information and communication technology services, clinical support services, and quality management and improvement.

3.8.31 Under the Management Services Agreement, the SHC would assume responsibility for the procurement of items required at the hospital sites, including medical supplies and equipment. Pharmaceuticals were to be procured through the Government's CPSU, while all other supplies and equipment were to be procured through the CPSU unless the Concessionaire could procure them at a better price/quality ratio. In all circumstances, this function was to be exercised in full compliance with the relevant legislative framework.

3.8.32 The SHC was to be bound by service levels and KPIs in performing the services that were to be contracted under the Management Services Agreement. An independent assessor was to be appointed to audit the services and report to a designated governance board. The Government would have an autonomous right to conduct a maximum of one audit per year.

3.8.33 The envisaged governance board was to consist of four voting representatives of the SHC, four voting representatives of the Government (one representing each of the following entities, the OPM, MFIN, the MFH and the Ministry for Gozo), and one non-voting independent chairperson. The chairperson was to be appointed for two years, with alternating appointment by the Government and the Concessionaire. The governance board was to meet quarterly and was to establish a quality assurance committee and an audit/finance committee, review the Concessionaire's performance and engage with the independent assessor, review and agree on any issues that arose, review and agree on an annual budget proposal that was to be submitted to the Government for consideration and final approval.

3.8.34 The budget was to include all costs incurred in the provision of the services, except costs for the Government employees, which were to be paid directly by the Government and the SHC's personnel in key roles. The latter category of employees was to be paid by the SHC out of the management fee that the Concessionaire was to receive as a consideration for the provision of the management services. A reconciliation exercise of actual against budgeted expenditure would take place annually. Revisions to the KPIs and the scope of services and/or service levels could be undertaken if the budget approved by the Government was different to the budget proposed by the governance board. As consideration for the provision of the services, the SHC was to be paid a management fee that was to be specified in the Management Services Agreement.

3.8.35 A management team was to be set up to manage the hospital sites, with the Government appointing a clinical director, head of nursing and/or head of allied health, and a HR director for each site to form part of the team. The persons appointed would take instructions from and be accountable to the Government but would report to the SHC CEO and acknowledge his/her authority at the sites, and be involved in decisions having an impact on clinical services and HR or industrial relations matters concerning the Government's employees.

3.8.36 Clinical services and staff were to be under the direction and control of the Government, which function was to include the conduct of industrial relations. Any person currently employed by the SHC and deployed at the hospital sites in a clinical role would be transferred to the Government as soon as reasonably practicable. Non-clinical Government employees would be under the management and direction of the Concessionaire, with the Government's HR directors reporting to the SHC CEO and cooperating with the Concessionaire regarding problems and disciplinary measures.

3.8.37 The SHC would be required to have an on-demand performance guarantee in place throughout the term of the agreement, which could be called on by the Government if the Concessionaire failed to perform its obligations. The Government would enjoy step-in rights in case of material breach by the SHC of its obligations, in the event of a national emergency, and on the occurrence of a force majeure event. The exercise of this right by the Government would preclude the SHC from performing its obligations.

3.8.38 It was in this context that the Minister for Health and the Minister for Finance and Employment sought Cabinet's approval regarding the proposed restructuring of the contractual relationship with the SHC.

Approval by Cabinet of the proposed restructuring of the contractual framework

3.8.39 Cited in the minutes corresponding to the Cabinet meeting held on 18 December 2020 was that the Minister for Health provided a detailed explanation of the agreement reached with the SHC, through which it was being proposed that the contractual framework regulating the Government and the Concessionaire was to be restructured. The proposed restructuring was put forward through a memorandum submitted by the Minister for Health and the Minister for Finance and Employment. The former explained that, in financial terms, this restructuring moved away from the penalties imposed under the existing arrangements insofar as the Government withdrew from the agreement and sought the return of the hospitals, with the SHC more focused on project management and the management of services. Cabinet discussed these arrangements at length and the required clarifications were provided. Following this, Cabinet approved the memorandum put forward and authorised the continuation of the necessary and appropriate procedures that would lead to the finalisation of the agreements that it had endorsed.

Missing the wood for the trees

3.8.40 According to the SHC, on the planned date of signing, that is, 18 December 2020, which coincided with the date of endorsement by Cabinet, the SHC was informed that although the agreements had been approved in principle, the renegotiated contracts could not be signed yet. Despite the postponement of the signature of the renegotiated agreements, the Government informed the SHC that there were only minor issues that it sought to address internally. The SHC indicated that the Government had earmarked 22 or 23 December 2020 for the signing of the agreements. The sense of conclusion of the renegotiation process was evident to the SHC in terms of the urgency imparted by the Government for the SHC's legal advisors to revise and prepare final versions of the agreements.

3.8.41 Notwithstanding this, the signing did not take place on the indicated dates. The SHC attributed this to the Government consistently raising new procedural, administrative and/or commercial requirements, even regarding matters that had either already been agreed to in principle or which the Government should have addressed at the outset of negotiations. According to the SHC, some of the reasons cited by the Government to justify postponements were approval by the Department of Contracts (DoC), direction sought from the State Advocate, the further review of the design and build agreement, and the need to justify the revised agreements based on independent audit reports. Nonetheless, the SHC contended that it was uncertain as to the reasons why the Government decided not to conclude negotiations at the time.

3.8.42 In submissions made by the MFH to the NAO, the two major stumbling blocks that persisted in this respect were the disagreement regarding the compensation payable for the investment already carried out and the management fee payable in respect of facilities management, and issues of legality concerning the possible change in scope of the concession without a fresh call for tenders.

3.8.43 On the matter of compensation payable for the SHC's investment, the MFH explained that the separation of the design and build and the facilities management contracts necessitated the consideration of unjustified enrichment. The parties agreed that the expenses incurred by the Concessionaire in the development of the Barts Medical School were to be reimbursed by the Government to the SHC. To this end, the SHC submitted a statement of capital expenditure estimated at €30,000,000. The Government sought to verify the costs claimed and set up an ad hoc committee supported by Grant Thornton. The MFH informed the NAO that the estimates drawn up by the SHC and the Government-appointed committee deviated significantly, in turn contributing to the stalling of negotiations.

3.8.44 Another source of disagreement in negotiations between the Government and the SHC indicated by the MFH was the management fee payable to the Concessionaire. The MFH contended that there was a substantial divergence in views between the Ministry and the SHC as to the magnitude of the fee payable. The Ministry sought to determine the basis of the management fee sought by the SHC, deeming that proposed by the Concessionaire as excessive, given that the management structure responsible for overseeing the hospitals remained relatively unchanged from when the Government held direct control. The MFH informed the NAO that this matter remained unresolved.

3.8.45 In terms of the legality of the proposed restructuring, the MFH acknowledged that this remained a contentious point. The source of contestation arose from the provisions of the SCA, which stipulated that "Any term of this Agreement may be amended or waived only with the consent in writing of the Parties and any such amendment or waiver will be binding on all Parties. Provided that no modification of this Agreement that changes the nature or general scope as defined in Clause 2[8] may be contemplated or agreed." In the NAO's opinion, evident through reference to Clause 2 of the SCA was that several changes to the nature and general scope would have been made through the proposed revised contractual framework. The concerns of the NAO

[8] Clause 2.2 of the SCA stipulates that, "The Parties hereby acknowledge and accept that the scope of the Concession shall include:

2.2.1 the provision of the Concession Services and Healthcare Services in conformity with Applicable Law and the Transaction Agreements;
2.2.2 the takeover of the management, maintenance and operation of the Sites in conformity with the Maintenance Requirements, the Transaction Agreements and Applicable Law;
2.2.3 the construction and, where applicable, redevelopment of the Sites in conformity with the Design, Redevelopment Requirements and other provisions of the Transaction Agreements;
2.2.4 the construction of the Medical College at GGH in compliance with the QMUL Malta Requirements;
2.2.5 the construction of the Nursing College at SLH in compliance with the terms of this Agreement;
2.2.6 the procurement, installation and operation of the Assets in conformity with the Maintenance Requirements and the Transaction Agreements;
2.2.7 the management of the Resources and the fulfilment of the obligations specified in the Labour Supply Agreement;
2.2.8 the provision of Medical Tourism authorised by GoM in terms of the Transaction Agreements;
2.2.9 the running of any ancillary commercial activities as may be authorised by GoM from time to time in writing; and
2.2.10 the performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of the Transaction Agreements."

were validated by the MFH, who indicated that such changes would have substantially altered the nature of the concession. The PS MFH noted that this procurement consideration had been highlighted as an issue of concern by the Ministry's legal experts and the DoC, with Government facing possible challenges as to the validity and legality of the proposed contractual framework. The NAO was not able to verify that stated by the MFH in terms of the advice provided by the Ministry's legal experts and the DoC as no documentation to substantiate that asserted was provided, with the Ministry maintaining that all advice obtained was verbal. Aside from limiting this Office's ability to ascertain that advised, the undocumented nature of the exchanges between the MFH and the DoC precluded the NAO from determining with certainty when during the process of negotiations this advice was obtained. Nevertheless, from submissions made by the MFH, this Office understood that the advice of the DG DoC was sought late in the process of negotiations between the Government and the SHC, possibly after Cabinet's approval was sought.

3.8.46 Consistent with that stated by the MFH were submissions made to the NAO by the Minister for Health. According to the Minister for Health, it was evident that the sanctioning of the DoC was required for changes to be made to the concession, and that such changes were to be legally permissible, therefore necessitating the involvement of the State Advocate. The Minister for Health maintained that, at the outset, the Government made clear to the SHC that any changes agreed on were subject to the endorsement of the DoC. Reiterating the salient elements negotiated during this phase, the Minister for Health indicated that these centred on terminating the concession as is, with the Government reassuming responsibility for the provision of health services and reacquiring the sites, while the SHC would assume responsibility for the capital works and hotel services. Despite the achievement of these objectives through negotiations, the DoC and the State Advocate indicated that the agreed changes could not be effected, as in essence, these would constitute the Government granting a direct contract to the SHC, which was not permissible.

3.8.47 Commenting on the general level of progress registered in the negotiations held, the PS MFH observed that discussions were never sufficiently mature to allow both sides to agree on a structured dialogue. The PS MFH lamented that the discussions remained exploratory in nature, failing to agree on a common agenda and methodology to be adopted in interactions between the parties. The exploratory nature of the discussions and the legal advice obtained were cited by the MFH as the reasons why the Ministry failed to retain any record of the process of negotiations. The NAO deemed the terming of negotiations as exploratory as incongruent with the fact that Cabinet was presented with a defined proposal on how the concession was to be restructured.

Settlement of pending claims

3.8.48 According to the SHC, the only development of note following the failure to conclude the revision of the contractual framework in December 2020 was the reaching of a settlement of a claim that the SHC had against the Government arising from the interpretation and application of the LSA and the HSDA. Although the proposed termination and settlement agreement contemplated the submission of such claims to arbitration, instead, a settlement was eventually agreed on.

A proposal to Cabinet for settlement

3.8.49 Cabinet's attention was drawn to this matter on 15 February 2021, through a memorandum titled 'Settlement of Pending Issues with Steward Healthcare', which was submitted by the Minister for Health and the Minister for Finance and Employment. Noted in this memorandum was that the Government was actively discussing the termination of the existent concession agreements and the negotiation of back-to-back new agreements with the SHC. Emphasised was that the subject of this memorandum was not the discussion of the new agreements, but the address of issues arising from the dissolution of the existing concession agreements. Communicated in this respect was that it was the Government's intention to settle these issues as part of the process of terminating the existing concession. Also noted was that another issue, relating to the compensation payable in view of capital improvements made to the hospitals, was to be presented to Cabinet at a later stage.

3.8.50 Outlined as background was that, over the years covered by the existing concession agreement, the MFH and the SHC had two long-standing points of contention. The first was that related to the increase in annual fees corresponding to the healthcare budget increase, and the second concerned the verification of the number of Concessionaire and Government employees at the hospitals. Cabinet was briefed on these issues.

3.8.51 In terms of the healthcare budget increase issue, the SHC had submitted a claim for an additional sum of approximately €8,400,000 in relation to fiscal years 2019 and 2020, over and above the annual financial budget provided to the Concessionaire by the MFH. Accrued interest on this amount was of approximately €450,000. Conversely, the MFH had withheld this payment to the SHC in view of the Concessionaire's failure to meet specific milestones and to provide financial guarantees as established in the HSDA.

3.8.52 As regards the second issue, that relating to the LSA, the SHC claimed that the MFH had undercompensated the Concessionaire for HR that it had to recruit to attain the required level of quality of care in the services it provided to patients at the GGH and the KGRH during the period 2016 to 2020. The SHC argued that an additional sum of approximately €25,000,000 was due in terms of the provisions stipulated in the appendices to the Addendum to the LSA dated 30 June 2017. Accrued interest on this amount exceeded €3,300,000 as at end December 2020. Conversely, the MFH had withheld payment and had argued that the provisions cited by the SHC represented an ambivalent situation, compounded by a lack of documentation by the Concessionaire to substantiate its claims.

3.8.53 Noted in the memorandum to Cabinet was that the MFH and the SHC had held successive rounds of discussions on these claims. However, no significant developments on the parties' respective positions had been registered. While it was acknowledged that the LSA and the HSDA provided for mediation and arbitration under the auspices of the International Chamber of Commerce, the arbitration costs and expenses relating to such proceedings would be calculated in proportion to the value of that contested, implying that these costs could be substantial.

3.8.54 The MFH had carefully considered its position against the backdrop of advice obtained from the State Advocate and external legal experts. The advice provided by the State Advocate was appended to the memorandum submitted to Cabinet.

3.8.55 Noted in the memorandum to Cabinet was that the advice provided by the State Advocate confirmed that the concession agreements were unclear about the adopted model of payment for the years following 2017 until the completion date. Nonetheless, among other points raised and captured in the advice was that the SHC continued with the uninterrupted provision of services in accordance with the agreements, and that according to the SHC, the non-fulfilment of the contractual obligations of the Concessionaire were not directly and exclusively attributable to it. Noted in the advice was that the magnitude of the proposed increase to be paid to the SHC was not specified, though reference was made to the non-binding MoU signed by both parties in 2019 that appeared to express an intention for the charges to be increased by nine per cent annually from January 2019 to the end of July 2023.

3.8.56 Accordingly, after having received all the information required from the SHC, the MFH could adjust its workings on the healthcare budget increase to reflect the upward revision in the charges based on the average increase in the healthcare budget, considering only those services provided by the Concessionaire. From these revised workings, it resulted that a further amount of approximately €5,000,000 and interest of €130,000 were due to the SHC.

3.8.57 Noted in the memorandum to Cabinet was that the State Advocate's advice clarified that the Government was obligated to provide a complement of 1,527 employees. The Government did not provide all the resources committed and therefore the SHC had to engage resources itself under its own payroll. Cited in the memorandum was that data obtained from the SHC indicated that the additional payroll cost for the Concessionaire, from the commencement of the concession period until 31 December 2020, exceeded €33,000,000.

3.8.58 Also clarified was that the charge due to the SHC ought to be revised to reflect the additional number of resources to be provided by the Government (from 1,250 to 1,527) to account for the actual pro rata value of the resources committed.

3.8.59 It was in this context that the Government acknowledged that the resources engaged by the SHC, and which were not provided by the Government, were required for the due provision of the services that the Concessionaire was obligated to provide in terms of the concession agreements. Accordingly, the MFH had adjusted this computation, considering the clarifications and confirmations indicated in the preceding paragraphs.

3.8.60 Acknowledged in the memorandum to Cabinet was that this calculation – based on the actual payroll cost incurred by the SHC and the adjustment to the charge – supported an additional payment due to the Concessionaire equivalent to approximately €20,000,000, covering the period May 2016 to end December 2020. Interest due was estimated in excess of €400,000.

3.8.61 The advice provided by the State Advocate concluded by highlighting that should the Government decide to settle the amounts agreed to be paid in settlement, an agreement was to be compiled and subscribed to by both parties. The scope of this settlement agreement was to ascertain that:

a. the SHC would not entertain further pretension, claim or allegation in relation to the LSA and the HSDA;

b. the settlement would be irrevocable in nature, but would not cover payments that were to become due after 1 January 2021; and

c. the settlement agreement would not substitute, revoke or repeal any obligation deriving from any agreement other than the HSDA and the LSA.

3.8.62 Against this setting, Cabinet was requested to authorise the drawing up of a settlement agreement by the State Advocate. The settlement agreement was to specify the payments of the amounts that the Government was to pay to meet the two claims by the SHC, as well as the conditionalities underpinning the settlement as per the State Advocate's advice.

3.8.63 Provided that the SHC endorsed such a settlement agreement, the Government was to pay a sum exceeding €5,000,000 as settlement of the claim related to the healthcare budget increase under the HSDA, and a sum exceeding €20,000,000 as settlement of the claim related to the LSA.

Cabinet approves the settlement payment

3.8.64 In an excerpt of the minutes of a Cabinet meeting held on 15 February 2021, reference was made to the memorandum submitted by the Minister for Health and the Minister for Finance and Employment that same day. The Minister for Health provided a detailed explanation of the discussions and difficulties that were emerging when seeking to overcome the matters that remained pending between the Government and the SHC. He proceeded to update Cabinet with the amounts payable by the Government to the Concessionaire to resolve certain issues, which could then lead to final agreement. Cabinet requested further clarifications, which were provided, and after lengthy discussion of the matter, approved the memorandum submitted.

Settlement does not lead to final agreement

3.8.65 The SHC informed the NAO that a settlement contract was entered into on 19 February 2021. Nonetheless, the SHC contended that this was a relatively minor matter in the context of the renegotiation of the concession. The General Counsel SHC International contended that the settlement of LSA-related claims in 2021 related to payments that were due and unpaid. Elaborating in this regard, the General Counsel SHC International maintained that the contention between the parties was not on whether payment was due by the Government to the SHC, but on the amount due. Although the General Counsel SHC International conceded that the settlement of the disputed claims imparted a sense of goodwill between the parties, this matter remained unconnected to the negotiations undertaken to restructure the concession.

3.8.66 A similar understanding of the relevance of the settlement of claims was put forward by the MFH, that indicated that the settlement was not intended to resolve the broader and more persistent problems that characterised the concession agreements. In agreeing to the payment, the MFH took comfort from the fact that settlement was in respect of personnel recruited by the SHC and deployed at the GGH and the KGRH, which translated in services being rendered to patients on behalf of the Government. The MFH acknowledged that this settlement payment was not provided for in the concession agreements and the decision to settle was supported by clinical advice highlighting critical services that were under-resourced. Moreover, clearance from MFIN and the State Advocate had been obtained by the MFH. The possible threat of the disruption of service by the SHC and referral to arbitration should settlement not be reached were other factors that influenced the MFH in its support of the decision to settle. In submissions to the NAO, the MFH indicated that it understood that resolution of the LSA claim would regularise payments that were due by the Government to the SHC for additional resources deployed and would facilitate further negotiations between the parties on more critical matters in connection with the concession.

3.9 The final attempt at revitalising the concession

3.9.1 Following the derailment of negotiations in December 2020, efforts at resuming discussions were made in April 2021. According to the SHC, a fresh round of negotiations between the SHC and the Government commenced in late April 2021 and continued up to early June 2021. The interlocutors on behalf of the parties remained unchanged (paragraph 3.8.2 refers); however, the General Counsel SHC International joined the Concessionaire's team and was present for several meetings. Included in this round of negotiations were meetings with INDIS Malta Ltd in view of its role as administrator of Government industrial sites, it being a party on the Emphyteutical Deed, and the potential lease of offices at the SLH. Other meetings were held with the BOV since the renegotiation of the concession would impact the financing and security arrangements in place.

3.9.2 In the SHC's understanding, the parties were close to concluding negotiations on a revised set of agreements. The revised contractual framework necessitated the termination of the existing concession agreements and entry into a hospital management services agreement and a design and project management agreement, and the payment of compensation to the SHC for investments made through a termination and settlement agreement.

3.9.3 According to the SHC, the point of departure of these discussions was the agreements that had been prepared in the previous round of negotiations, which ended without fruition towards the end of December 2020. However, one major difference evident in this fresh round of negotiations was the role of the SHC in connection with the redevelopment of sites. Under this revised arrangement, the SHC would no longer be responsible for construction, but retain the role of designer and project manager, with the construction contractor engaged directly by the Government through a special purpose vehicle. The SHC understood that, for reasons of expediency, while the termination and settlement agreement and the management services agreement would be signed in a final execution format, the design and project management agreement would be initially signed as a heads of terms until replaced by a full-form agreement.

3.9.4 The SHC asserted that negotiations were intense, with the SHC teams spending several weeks in Malta engaged in daily meetings and exchanges of drafts. In substantiation of that stated, the SHC provided the NAO with the agenda of a meeting scheduled for 26 May 2021. Captured in the agenda were the remaining pending matters that were to be addressed by the several stakeholders involved in discussions, which once resolved would lead to the close of negotiations and the signing of the revised concession agreements. In view of previous Government last-minute withdrawals from negotiations, the SHC sought commitment by the Government in terms of a definite date by when the agreements were to be signed. Although the SHC issued an ultimatum to the Government to conclude by the end of May 2021, the Minister for Health contended that this was not possible; however, proposed 8 June 2021 as the new date for signing.

3.9.5 Correspondence exchanged between the Government's legal consultant and the SHC legal advisor on 1 June 2021 attested to the ongoing negotiations between the parties. Appended to the correspondence were revised drafts of the termination and settlement agreement, the management services agreement, and the letter of intent corresponding to the design and project management agreement. These drafts reflected the position resulting from discussions held earlier that day and remained subject to the Government's review. Pending matters were highlighted with respect to each agreement. In the case of the termination and settlement agreement, the parties were yet to agree on the settlement amount, payment mechanics, amounts payable by the SHC to the BOV, and the deduction of advance payments made under the existing concession agreement. As regards the management services agreement, matters relating to the management fee, service levels and KPIs, among others, were still under consideration. In terms of the design and project management agreement, pending matters comprised the basis of the fee payable to the SHC and the mechanics that were to regulate such payments. Other matters raised related to the termination of the emphyteutical deed and, with respect to the BOV, the Security by Title Transfer and the Direct Agreement relating to the facility granted to the SHC. An agreement capturing the offsetting of the management fee payable by the Government to the SHC against tax due was also circulated. The SHC's feedback in relation to all matters that remained pending was sought. In copy were the PS MFH, the PS MFIN, the State Advocate, the General Counsel SHC International, and several other Government and SHC officials.

3.9.6 Based on submissions made by the SHC, around 4 June 2021, the Government expressed reservations regarding the signing of a heads of terms in connection with the design and project management agreement, and that full and final agreements were to be finalised and signed concurrently later in June. For a brief period thereafter, the SHC believed that the Government intended to continue with negotiations. In fact, the SHC had meetings with the Commissioner for Revenue wherein agreement was reached for the regulation of the repayment of VAT arrears over the remaining concession term. Although the agreement reached with the Commissioner for Revenue was signed by the SHC, the Commissioner did not countersign.

Due diligence revisited

3.9.7 The restructuring of the concession envisaged that the Government would reacquire assets held by the SHC. To this end, the MFH and MFIN commissioned Grant Thornton to undertake a due diligence exercise to identify any links that existed between the assets and the SHC. In response to queries raised by the NAO, the MFH indicated that the Grant Thornton report did not proceed beyond draft format and could not be considered a formal and finalised report. For this reason, it was not submitted to the NAO. Queries addressed to MFIN remained unaddressed.

3.9.8 A glimpse into that sought by the Government through this due diligence exercise was provided by the SHC. An excerpt of the request for information submitted by Grant Thornton to the SHC on 26 April 2021 was made available to this Office. Noted in the request was that Grant Thornton was aware that SHC International SL (a Spanish-based entity) was in the process of acquiring the assets of SHC International Holdings Ltd (a UK-based entity) and that a share transfer agreement was being drawn up. Grant Thornton indicated that the share transfer was not yet registered with the MBR. Referred to in this context was that Grant Thornton was provided with some information relating to SHC International SL, which company was owned by SHC International Investors LLC (a US-based entity). Also noted by Grant Thornton was that SHC International SL was previously known as Cordiant Health Care Services KSA SL, while SHC International Investors LLC was earlier known as Manolete Management LLC. Nonetheless, no further information was received by Grant Thornton to confirm ownership of SHC International SL. Reference to publicly available information led Grant Thornton to the understanding that SHC International Investors LLC was founded by Dr Ralph de la Torre, and that 90 per cent of this company was controlled by physicians, with the remaining 10 per cent controlled by Medical Properties Trust Inc. Grant Thornton identified a link between SHC International SL and SHC International Investors LLC, in that the UBOs of both companies were the same. To obtain a better understanding of these companies and their potential links, Grant Thornton requested information and documentation relating to SHC International Investors LLC, SHC International SL and their investors/controllers.

3.9.9 Although the outcome of this due diligence exercise remained unknown to the NAO, the relevance of the exchange between Grant Thornton – acting on behalf of the MFH and MFIN – and the SHC is that the possible change in ownership of the Concessionaire was highlighted as early as April 2021. The relevance of this fact is expounded on in section 8.1 of this report.

Another excessive deficit procedure dialogue visit by Eurostat

3.9.10 Eurostat carried out another EDP dialogue visit to Malta between 31 May 2021 and 1 June 2021, with its Final Findings report issued on 27 January 2022. Similar to previous meetings held, the purpose of this review was to assess compliance of the Maltese EDP and data corresponding to Government Finance Statistics with the accounting rules of the European System of Accounts

2010 and with the Manual on Government Deficit and Debt 2019. In this context, several issues were discussed, one of which was the PPP entered into by the Government and the VGH in relation to the GGH, the KGRH and the SLH, control over which was later assumed by the SHC.

3.9.11 Acknowledged in the report on the Eurostat EDP dialogue visit of 2021 was that the concession had been discussed in the previous visit and was put on-government balance sheet in October 2018. Noted in the 2021 Final Findings report was that the Government had attempted to renegotiate the concession with the SHC to enter into another form of operational agreement.

3.9.12 According to Eurostat, the NSO anticipated that the Government would be taking over the project; however, the SHC would continue to manage the assets. The NSO further indicated to Eurostat that there ought to be developments in 2021, following which Eurostat was to be provided with the agreements and the NSO's statistical assessment thereof.

3.9.13 In submissions to the NAO, the SHC referred to the Final Findings report corresponding to the Eurostat EDP dialogue visit held in mid-2021 as evidence of the Government's commitment to amend and restructure the concession to render it workable.

The unravelling of a concession

3.9.14 According to the SHC, despite attempts made by it at renegotiation, discussions did not resume after June 2021. Elaborating in this respect, around August 2021, the Government informed the SHC that it was not willing to renegotiate the concession and that the concession was therefore to remain as is, at least for the near future. Queried as to why the third phase of negotiations came to a halt, the General Counsel SHC International indicated that the SHC was unaware of why the Government aborted discussions.

3.9.15 Some insight was provided to the NAO by the Minister for Health, who informed this Office that the concerns raised by the DoC and the State Advocate regarding compliance with the Public Procurement Regulations and the legality of changes proposed in terms of the contractual framework persisted.

3.9.16 During the period under review by the NAO, the final reference to the concession in Cabinet's records was made in a meeting held on 3 November 2021. In an excerpt to the minutes of this meeting, the Minister for Health referred to previous decisions taken by Cabinet regarding the negotiations that were underway with the SHC and updated Cabinet with current developments in discussions with the Concessionaire. He stated that the Government and the SHC did not want to continue to operate in terms of the existing contracts.

3.9.17 The Minister for Health indicated that three alternative courses of action were available to terminate the existing contractual ties. First was that the SHC could decide to terminate the agreement, which scenario entailed no disbursement by Government to the Concessionaire. The second scenario envisaged the Government instigating the termination of the concession agreement, which would imply that the Government would be obligated to pay damages to the SHC as stipulated in the contractual framework. The third option entailed agreement between the parties as regards what payments were to be effected and how contractual ties were to be dissolved.

3.9.18 Noted in the minutes was that the Minister for Health acknowledged that, at this stage, a definite solution had not been identified and that all avenues were being explored. He indicated that the MFH would be more demanding in ascertaining that the commitments promised by the SHC were honoured. The Minister for Health stated that Cabinet ought to consider maintaining the existent contractual ties until alternative options were found; however, he indicated that there ought not to be negotiations on revisions to the concession. Cabinet endorsed that proposed.

3.9.19 According to the MFH, compounding matters throughout all phases of negotiations was the Government's lack of visibility over the financial situation of the SHC. The MFH noted that the Concessionaire's failure to provide its audited accounts rendered negotiations by the Government all the more challenging for the liabilities that it could potentially inherit remained unknown. Elaborating in this respect, the Ministry indicated that the departure of the SHC could imply that the Government would have to assume the Concessionaire's liabilities and settle payment with its various suppliers and service providers. Citing the substantial dues payable by the SHC in terms of tax and amounts outstanding with creditors and suppliers, the MFH noted that the longer the negotiations took, the greater the accumulated liabilities. This situation was further complicated by the likely scenario that would result should the Government take over the running of the hospitals, with suppliers and service providers seeking to settle amounts owed prior to their provision of service.

3.9.20 The disagreements and concerns captured in the preceding paragraphs precluded agreement being reached by the parties on a revised concession agreement. The MFH indicated that, as a result of this impasse, the existent contractual framework continued to apply.

The death knell of renegotiation

3.9.21 That asserted by the MFH, regarding the continued applicability of the contractual framework as is, was stated by the Minister for Health in a plenary session of Parliament on 18 May 2022. In reply to a question put by an Opposition Member of Parliament with respect to the status of discussions between the Government and the SHC, the Minister for Health indicated that the Concessionaire was bound by the contractual framework originally entered into by the VGH. The Minister for Health referred to the fact that the SHC had acquired the entire shareholding of the VGH and therefore took over the contracts in their entirety. The Government expected that the SHC provided the services as contracted in the concession. While the Minister for Health acknowledged that it was natural for the SHC to seek to improve the conditions of the concession to their advantage, this was not permissible. In his parliamentary address, the Minister for Health maintained that no changes that altered the nature of the concession could be permitted, for the Public Procurement Regulations prohibited such amendments. Elaborating on the way forward regarding the concession, the Minister for Health referred to the several ongoing court cases that bore impact on the Government's relationship with the SHC and the implementation of the concession. Nevertheless, the Minister for Health argued that the MFH regularly monitored the health services provided and contended that the services at the GGH had improved and were of a high standard.[9]

3.9.22 In submissions to the NAO, the SHC referred to the parliamentary sitting of 18 May 2022, wherein the Minister for Health publicly declared that the Government was categorically against the renegotiation of the concession. According to the SHC, this was the first time since its acquisition of the VGH shareholding that the Government had made such a declaration. The SHC contended that this fully contradicted the prior commitments made by the Government, be it privately and publicly. Furthermore, the SHC argued that this constituted a breach by the Government of its commitment and violated the SHC's foreseeable legitimate expectations.

3.9.23 Aside from the reporting on the parliamentary sitting of 18 May 2022, this report does not account for developments that might have taken place after end 2021.

[9] Excerpt from the plenary session of Parliament held on 18 May 2022 – intervention by the Minister for Health, "… Steward huma marbutin bil-kuntratt u bil-konċessjoni illi oriġinarjament kienet ingħatat lill-VGH. Dak il-kuntratt ittieħed b'kollox, fil-fatt Steward xtraw l-ishma tal-VGH. Iġifieri ħadu over, daħlu fiż-żarbun tal-VGH. U allura aħna għadna nippretendu, u hekk jiġri, illi Steward jagħtu is-servizz skond dak il-konċessjoni. Ovvjament Steward, bhal kull konċessjonarju ieħor, dejjem jixtiequ illi jtejbu l-kundizzjonijiet a favurihom, imma ovvjament [dan] ma jistax jiġri. Iġifieri l-konċessjoni hi dik li hi. Ma jistax isir xi tibdil illi jbiddel is-sustanza tal-konċessjoni. Il-liġi tal-procurement ma tippretendihiex, ma thallihiex din. Sa dan it-tant iva, kif sewwa qal l-Onorevoli Fenech Adami, hemm kawżi fil-Qorti, hemm aktar minn dawk illi semma' hu. L-eżitu tagħhom huwa interessanti anka għalina fis-sens tar-relazzjonijiet illi għandna ma' Steward u tat-tħaddim tal-konċessjoni. … U aħna qegħdin nistennew biex naraw ukoll x'impatt se jkun hemm fuq il-mod ta' kif jaħdem Steward ġewwa pajjiżna. Li huwa cert hu illi s-servizz innifsu, is-servizz tas-saħħa, għax dawn kwsitjonijiet li jissemmew ħafna u repetutament huma kwistjonijiet kuntrattwali, u kwistjonijiet ta' interpretazzjoni tal-konċessjoni, u s-sitwazzjonijiet legali. Is-servizz tas-saħħa aħna nimmonitorjawh ta' kuljum, il-ħin kollu, u s-servizz tas-saħħa ġewwa l-Isptar ta' Għawdex fil-fatt huwa servizz ta' livell għoli ħafna, servizz illi tjieb matul is-snin, u servizz illi aħna ħa nibqgħu għassa biex naraw illi dak li qed nistennew ghall-pazjenti tagħna, li hu xejn inqas minn l-eċċellenti, jibqa' jingħata bħal ma huwa obbligat illi isir."

Chapter 4| Implementation of the Service Concession Agreement

4.1 Overview of the Services Concession Agreement

4.1.1 The Government, represented by the Minister for Energy and Health, and VGH Ltd, VGH Assets Ltd, and VGH Management Ltd, collectively represented by the Director VGH, entered into the SCA on 30 November 2015. The scope of the SCA was for the Government to grant VGH Ltd and VGH Management Ltd, collectively referred to as the Concessionaire, the concession. The concession was defined in the Agreement as: the exclusive right to develop, design, engineer, monitor, procure, finance, construct, equip, operate, maintain, embellish and manage the sites; and a services concession for the provision of those services that the Concessionaire was obligated to render in line with the SCA and the HSDA on and from the sites.

4.1.2 Aside from the VGH's obligations to redevelop, maintain, manage and operate the GGH, the KGRH and the SLH, supply healthcare services to the Government and develop local service offerings, the grant of the concession necessitated the Concessionaire's achievement of several other objectives. These ancillary objectives included the construction of a medical school to be operated and managed by QMUL Malta; a university-level educational institution offering teaching and qualifications in nursing; a state-of-the-art research and development facility for the healthcare sector; and a health centre at the GGH to be operated by the VGH.

4.1.3 Following the redevelopment of the sites to the standard required by the SCA, the VGH was required to provide consistent, reliable and uninterrupted healthcare services of the standards outlined in the HSDA. While the SCA stipulated that beds, as well as other facilities and additional services at each of the sites were to be made available to the Government, the capacity not reserved for such use could be offered by the VGH to medical tourists.

4.1.4 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 the Director VGH.

4.1.5 A key change to the SCA in terms of the period for realisation of the completion date of the concession milestones was effected through the Addendum to the SCA dated 30 June 2017. Through this Addendum, the time allowed for the achievement of the concession milestones was extended to four and a half years; however, this period was to be contingent on the issuance of the relative licences and permits required by the Concessionaire to fulfil its obligations. Of note to the NAO was that this Addendum was not authorised by Cabinet.

4.1.6 On 16 February 2018, SHC International Ltd acquired the shareholding of VGH Ltd and, in view of their subsidiarity, that of VGH Assets Ltd and VGH Management Ltd. As a result, SHC International Ltd assumed control of the concession. In due course, VGH Ltd, VGH Assets Ltd and VGH Management Ltd were renamed to Steward Malta Ltd, Steward Malta Assets Ltd and Steward Malta Management Ltd, respectively. The ensuing paragraphs provide an account of the implementation of provisions emanating from the SCA by the Concessionaire. The scope of the NAO's reporting in this respect is from February 2018 until December 2021.

4.2 Change in control

4.2.1 As already reported in section 2.2 of this report, on 27 December 2017, the VGH Group sought the Government's approval for the sale by Bluestone Investments Malta Ltd of its shareholding in VGH Ltd to SHC International Ltd. The Government granted its consent to the request by the VGH on 29 December 2017. The endorsement by Government effectively permitted the change in control of the concession, from the VGH to the SHC. On 16 February 2018, the shares of VGH Ltd were transferred by its parent company, Bluestone Investments Malta Ltd, to SHC International Ltd.

4.2.2 The NAO sought to identify the provisions regulating a change in control in the concession agreements. Critical in this respect was Clause 15 of the SCA, which stipulated that "For 3 (three) years from the Completion Date the Concessionaire shall not suffer or allow to suffer the transfer, transmission, allotment, assignment or other dispersion sohowever called of its shares or the shares of its subsidiaries without the express prior written consent of GoM." Another reference to a change in concessionaire was made in Clause 35 of the HSDA, wherein the following is stated, "Change of Control shall be regulated by the provisions of the Concession Agreement that relate to Change of Control, which provisions shall mutatis mutandis apply."

4.2.3 The provisions regulating change of control drew the NAO's attention. The wording of Clause 15 of the SCA seemed to indicate that the Government's consent would only be required in the three years following the completion date. The completion date represented the point when the concession milestones were achieved and the contracted works carried out. According to the SCA, the completion date was to be achieved by 31 December 2018; however, this was later made contingent on the issuance of planning permits. Notwithstanding this, the VGH sought the endorsement of the Government prior to the transfer of control of the concession.

4.2.4 By April 2022, the completion date had not been realised. Irrespective of when this date occurs, any change in control for the three years after this date necessitated Government's prior consent. The SCA is silent on the regulation of change of control prior to the completion date and the years following three years from completion. While the latter period elicits less concern, for during this phase, the required capital investment would have already been made and the concession fully operational, the same cannot be said for the former period. In the NAO's opinion, the period preceding the completion date represents the most critical period in the project, with the complexity of the concession, the coordination required among all stakeholders, the securing of financing and the sensitivity of services to be provided all contributing to this criticality. It is against this context that the NAO sought the views of the key players as to whether the Government's interests in the realisation of this project were safeguarded.

4.2.5 The Prime Minister indicated that he was of the understanding that the Government's authorisation for the change of control was required and in fact sought.

4.2.6 In submissions made to the NAO relating to the change of control at a critical juncture of the concession, the Minister for Health deemed the change in concessionaire as an opportunity for vast improvement, with the transition from the VGH – an entity with no track record – to the SHC – the operator of multiple clinics and hospitals – seen as a step in the right direction.

4.2.7 An interesting perspective obtained by the NAO regarding the regularity of the change in control was that provided by the MFH. The Ministry acknowledged that the wording of the provisions regulating change of control in the SCA were ambiguous and could lead to different interpretations. In fact, the perspective put forward by the MFH was different to that of the NAO. Whereas this Office adopted a strict and narrow understanding of Clause 15 of the SCA, the MFH's understanding was broader. While the NAO understood that the Government's consent was only required in the three years following the completion date, which date had not yet been achieved, the MFH understood that this consent was required from the point of entry into the SCA up to three years following realisation of the completion date. The MFH and the NAO conceded that the interpretation of this Clause became a moot point once the VGH requested and the Government authorised the transfer of the shares, hence regularising the change of control.

4.2.8 In turn, the PS MOT asserted that Clause 15 of the SCA and Clause 35 of the HSDA required the Government's written consent for a change of control. According to the PS MOT, since this consent was granted by the Government, then it followed that the transfer respected these provisions.

4.2.9 Another view obtained by the NAO was that of the Chair Negotiation Committee, which Committee was tasked with bringing to a close and formalising the agreement between the Government and the VGH. The Chair Negotiation Committee provided a different understanding to that of the NAO, similar to that of the MFH, for he was of the opinion that the Government's consent was required all the way up to three years following the completion date. Although he indicated that he was not involved in negotiations associated with the transfer to the SHC, he noted that the VGH shareholders did request such consent in line with this understanding. The Chair Negotiation Committee maintained that post this period, Government consent would not be required and acknowledged that while the RfP did not envisage a restriction on transfer, the Government considered it appropriate to include such a provision in the contractual framework.

4.2.10 The NAO sought the views of MFIN on whether the Ministry was informed of or otherwise involved in the process leading to the change of control of the concessionaire during this period. Despite requests made, no reply was submitted.

4.2.11 Having explored the Government's perspective on the regularity of the change of control, the NAO directed similar queries to the VGH and the SHC. In submissions to the NAO, the Director VGH referred to the duress that he was under to effect the transfer of the concession. Given this, the Director VGH deemed it reasonable to presume that the Government had given its consent and that the Government and the SHC had complied with all regulatory requirements.

4.2.12 On the other hand, the General Counsel SHC International contended that, irrespective of how one interprets the relevant contractual clauses, the change of control occurred with the Government's approval. Furthermore, the grandfathering of the clause through the explicit authorisation granted by the Government was sufficient for the transfer of shares in the VGH. Moreover, the Legal Advisor SHC contended that, in a worst-case scenario, one could argue that Clause 15 of the SCA did not apply and therefore the SCA was silent on what happened before completion was achieved. If the Agreement was silent, then the matter was not regulated. In a different scenario, one could possibly argue that, by analogy, this consent requirement applied. However, in any case, since the counterparty was the Government, if its consent was obtained, then the transfer would be possible.

4.2.13 Despite that stated by the representatives of the Government and the SHC, an element of concern persists, for a change of control during a critical period in the concession effectively remained unregulated. The NAO is of the opinion that this gap exposed the Government to risk, for the silence of the SCA created the possibility of change of control of the concessionaire without Government having any say. It remained unclear to this Office why the SCA only regulated change of control within a specific three-year period of the thirty-year term. Although the NAO acknowledges that circumstances beyond the control of the Government may warrant a change of the concessionaire, this Office maintains that the SCA could have provided for clearer regulation on when this was permissible and under what conditions.

4.2.14 Given the contractual gap regulating change of control, particularly prior to the completion date, the NAO sought to identify whether other provisions applied. To obtain a broad context, this Office considered the Treaty on the Functioning of the EU (TFEU), which establishes the fundamental principles of various aspects of the Union, including regulation of the internal market and common rules on competition. The TFEU stipulates that the procurement process and contracts awarded pursuant thereto are to respect the principles of transparency, equal treatment and non-discrimination. Changes in the composition of a tenderer raise concerns regarding the lawfulness of the decision awarding the contract, particularly when the change constitutes substantial alterations to a contract following the conclusion of the procurement procedure or during the term of the relevant contract. In this case, the change of control was effected only two years following the award of the concession. Nevertheless, whether a change is permissible remains contingent on the specific assessment of the facts on a case-by-case basis.

4.2.15 To ascertain whether change of control was regulated by the procurement regime in force at the time of issue of the RfP, that is, in March 2015, the NAO reviewed the relevant EU directive and local procurement regulations. Concessions were not properly regulated under European law until 2014, when Directive 2014/23/EU on the award of concession contracts was adopted. Notwithstanding this, until March 2015, this Directive had not been transposed into Maltese law, hence rendering it inapplicable at the time. Consequently, the Public Procurement Regulations (Legal Notice 296 of 2010), were the main legislative documents governing public procurement in Malta at the time of issue of the RfP. Nevertheless, Article 17(2) of the Public Procurement Regulations, 2010 specified that the regulations did not apply to public service concessions. This situation creates a vacuum in terms of assessing whether the change of control was permissible and how it ought to be regulated.

4.2.16 Aside from the point when the RfP was issued, the NAO also considered another frame of reference, that is, December 2017 – the point when the VGH submitted its request to the Government for the change of control of the concession. Again, this Office reviewed the applicable EU directives and national procurement rules.

4.2.17 Article 77 of Directive 2014/23/EU is of interest in this respect for it stipulates that, "… the successful tenderer performing the concession should be able, in particular where the concession has been awarded to a group of economic operators, to undergo certain structural changes during the performance of the concession, such as purely internal reorganisations, takeovers, mergers and acquisitions or insolvency. Such structural changes should not automatically require new award procedures for the concession performed by that tenderer." The NAO deemed this provision as providing an element of assurance as to the regularity of the change of control.

4.2.18 As regards local legislation regulating procurement, the Concession Contracts Regulations, 2016 (Legal Notice 353 of 2016) were applicable at the time the request by the VGH in connection with the change of control was submitted to the Government. Article 4 of the Regulations provides that, "Any concession procedure which has been issued prior to the publication of these regulations shall continue to be regulated by the laws which were previously in force, including any review on any decision thereon." Reference to regulation by laws previously in force reinforces the gap previously identified, for this reference links to the Public Procurement Regulations (Legal Notice 296 of 2010), which in turn do not regulate public service concessions.

4.2.19 Given the lacunae in legislation regulating service concessions issued prior to the enactment of Legal Notice 353 of 2016, regulation of change of control in this concession rested solely on the provisions cited in the SCA. Therefore, the NAO is of the opinion that the SCA ought to have more robustly governed the context allowing for change of control, the conditions under which such a change could be effected and how this was to be undertaken.

4.3 The committees mandated through the Services Concession Agreement

4.3.1 The NAO sought to obtain insight into whether the committees that were to oversee the SCA and the broader concession were established in line with the provisions stipulated in the Agreement. Key in this regard were the Health Construction Committee (HCC), the Health Management Committee (HMC), the Project Monitoring Board (PMB) and the Maintenance Monitoring Board (MMB).

4.3.2 The HCC was 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. The composition, structure and proceedings of this Committee were to be managed internally by the Government. This Committee was to be the Concessionaire's point of contact with the Government in relation to the works to be carried out. 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.

4.3.3 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 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.

4.3.4 The PMB was to be composed of three representatives of the Concessionaire, one representative of the Government and one representative of the QMUL and was to convene at least fortnightly to discuss reports submitted by the Concessionaire. In essence, the role of the PMB included the monitoring of progress registered in respect of the works programme, approve changes thereto and variations in scope connected therewith. Additionally, the PMB was tasked with approving changes in sub-contracts, certifying the achievement of concession milestones and managing the rectification of works deemed necessary. Several monthly, quarterly and final reports were to be issued by the PMB, intended to capture the progress of works undertaken.

4.3.5 The MMB was to be constituted with representatives of the Concessionaire, the Government and the QMUL, with the former having a majority representation. This Board was tasked with determining an annual preventive maintenance plan to be carried out by the Concessionaire and ensuring that corrective action was taken whenever repairs were necessary.

4.3.6 As reported in Part 2 of the NAO's audit of this concession, the HCC and the HMC were immediately fused, evident in the joint meetings held as early as August 2016. 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 HCC and the HMC would be meeting together fortnightly.

4.3.7 With the concession under the control of the VGH, the Committees ceased to function post April 2017, which understanding was arrived at based on the absence of any records of meetings held despite requests to this effect. Following the transfer of the concession to the SHC, the earliest record of meetings held was in February 2019, that is, one year after the change in control of the Concessionaire. Evident in the NAO's review of this first meeting post-transfer, was that the PMB was no longer fused with the HMC.

Oversight by the Project Monitoring Board

4.3.8 Based on the NAO's review of minutes of meetings held, the focus of the PMB was mainly related to the planning of the redevelopment, maintenance, management and operation of the sites at the GGH, the KGRH and the SLH. In addition, the PMB oversaw progress registered in the designs, including aspects relating to timeframes and milestone achievements.

4.3.9 The NAO established that following the change of control of the concession from the VGH to the SHC in February 2018, the PMB did not meet during the first year, with its first meeting convened on 8 February 2019. In submissions made to the NAO, the MFH indicated that the one-year lapse in convening the PMB was attributable to the more pressing matters that occupied the Ministry's attention following the change of control. Elaborating in this respect, the MFH noted that there were several problems with the implementation of the agreements, at times involving substantial public funds, which detracted the Ministry's attention from other matters, including the project management function that ought to have been fulfilled through the PMB. Queried as to this lapse, the SHC indicated that it was unaware of the reasons for the delay in reconvening the PMB. The SHC noted that meetings were called by the Government given its role as Chair. Nonetheless, the SHC asserted that its representatives on the Board always attended meetings held.

4.3.10 The members appointed to the PMB were an Advisor to the Minister for Health as Chair and in representation of the Government, and the President SHC Malta, the Vice President (Real Estate & Facilities) SHC International and the Director (Capital Projects) SHC Malta as members and in representation of the Concessionaire. The remaining member of the PMB was the QMUL Malta representative. In addition, in regular attendance were a Project Architect Consultant and a Project Engineer Consultant from Enemalta. The occasional attendance of other stakeholders was also noted, most notably, that of the Chair Projects Committee (PC), the Consultant MFH, other SHC officials and third-party representatives engaged by the SHC, as well as a legal representative of the MOT.

4.3.11 Once reconstituted in February 2019, attendance to the PMB was consistent by most of its members, except for the QMUL Malta representative, who only attended one meeting. Despite the SCA requirement for the PMB to convene at least every two weeks, the minutes provided to the NAO indicated that the Board only met ten times in 2019. Whereas in March and September, the PMB met twice due to extraordinary circumstances, no meetings were held during May, August and December 2019.

4.3.12 The SCA stipulated the reporting function that the PMB was to fulfil. To this end, specified in the SCA were the monthly, quarterly and final reports that were to be compiled by the Board. The NAO established that no reports in the format specified in the SCA were drawn up by the PMB during the period reviewed. By means of example, the monthly report was to include information regarding the overall status of works undertaken, staff assessment, a project summary, challenges and key issues, identified risk and a health and safety update, tasks and next steps, decisions and consent required, key future dates and budgeted costs. While elements of these aspects were discussed by the PMB, the NAO's concern gravitated towards the fact that the PMB failed to report in a regular and systematic manner, thereby rendering the management of the project unstructured and incoherent.

4.3.13 A record of the salient developments registered in these meetings is presented hereunder in chronological order.

Meeting held on 8 February 2019

4.3.14 The first meeting of the reconstituted PMB was held on 8 February 2019. The Chair PMB reiterated that the function of the Board was to work in tandem with the parties of the SCA and ensure that the obligations of the SHC were being appropriately fulfilled. In addition, the PMB was to ascertain that the redevelopment of each campus cited in the SCA was achieved.

4.3.15 In terms of the composition of the PMB, the Chair of the Board referred to that stipulated in the SCA and confirmed that attendance was in accordance with the Agreement, except for the QMUL Malta representative. QMUL Malta was primarily responsible for the running of the medical school yet to be constructed. Also present for the first meeting of the PMB were two third-party experts appointed to assist the Concessionaire to fulfil its obligations. While the appointment of these third-party experts was in accordance with the provisions of the SCA, the NAO noted that the Government did not exercise its right to appoint its experts to provide technical advice.

4.3.16 A presentation of the plans for the redevelopment, maintenance, management and operation of the sites at the GGH, the KGRH and the SLH was given by a representative of the SHC, who confirmed that:

a. the planned completion for the Barts Medical School was June 2019. The PMB was informed that QMUL Malta agreed with the timing since it was in line with their schedule to receive students the following scholastic year;

b. the handing-over papers being prepared by Malta Enterprise and QMUL Malta relating to the Anatomy Centre were overdue since the latter had already started using the premises; and

c. in clarification meetings held between the Government and the SHC, changes in the number of beds and services to be provided by the Concessionaire at the GGH, the KGRH and the SLH were being discussed. The suggested bed programme comprised:
   i. GGH:
      - 150 acute-care beds distributed over several lines of service,
      - 200 long-term care beds, and
      - 25 rehabilitation beds;

ii. KGRH:
- 370 beds for long-term care and rehabilitation; and

iii. SLH:
- 80 short-term (slightly more acute) rehabilitation beds, and
- 12 dermatology beds, which were a new focus for the SLH.

4.3.17 The Chair PMB noted that due to the current structure of the GGH, it was not possible to increase the beds to the suggested numbers. However, the SHC expressed confidence that the increase in capacity represented anticipated future bed distribution requirements.

4.3.18 The PMB was informed that, following meetings with stakeholders, the SHC intended to carry out an eight-week design process planned to commence on 25 February 2019. During this process, representatives from each site, consultant partners, a medical equipment and technology planning firm and other experts would be brought on board. The plan was that during the first week, the teams would conduct a series of meetings on site with the users, followed by work on the plans. On the fifth week, the teams were to return to their respective sites to hold further meetings with the users and to provide presentations of the proposed way forward. By the eighth week, the redevelopment options for each site would be refined and presented once again. The best options, including high-level budgets, would be available by the end of this eight-week process.

4.3.19 The SHC confirmed that although a pre-established project planning budget would not be set, the eight-week period would include direction provided by high-level stakeholders. Once this direction was received, discussions would be held to determine whether the selected option was economically reasonable and the financial outlay possible. Also noted was that the SHC was to provide continuous financial information throughout the eight-week assessment process. The third-party expert on the PMB warned of the risk that some users might be promised projects that could not be funded and therefore indicated that it would be crucial to set a pre-established budget capturing feasible expectations.

4.3.20 As the PMB was to consider this exercise from a local health perspective and anticipate possible problems before these materialised, the SHC was requested to provide the Board with information regarding the intended stakeholders and interested partners to be consulted during the eight-week process. The SHC informed the PMB that a proper room functional planning process would be carried out during the eight-week period with the key areas including circulation, parking and procurement to be addressed.

4.3.21 A legal representative of the MOT, in attendance at the meeting of the PMB, provided the Board with a presentation relating to the contractual framework regulating the concession. Following this presentation, the Chair PMB suggested that, although the SCA provided for four committees, it would be more practical to merge the HCC and the PMB until the achievement of the milestones, which would then necessitate the separation of the two.

4.3.22 An SHC representative indicated that in the absence of the HMC, and following discussions with Malta Enterprise, one of the third-party experts on the PMB was nominated to facilitate the handing over of the Anatomy Centre to the QMUL Malta. The third-party expert confirmed that a final assessment was carried out on 15 December 2018 and that the Centre was ready for use. The QMUL Malta agreed with this evaluation. The PMB endorsed the nomination of the third-party expert.

4.3.23 Following queries raised by a third-party expert on the PMB and clarifications provided by the legal representative of the MOT, the Board agreed that the service commencement certificate could be issued with the possibility of including a snag list containing non-critical items. Notwithstanding this, once the certificate was issued, the premises would fall under the facilities management function. A certificate of final completion would then be issued when all snags were resolved. The legal representative of the MOT noted that each service commencement certificate issued would imply that a milestone was complete and would trigger the SHC's obligation of maintenance.

4.3.24 Also noted was that the SCA did not include a defects liability period. It was therefore strongly recommended that a defects liability period of at least one year be introduced for future developments, such as in the case of the GGH, where the contractor had not yet been selected. This would cover any latent defects that arose from the project works, which would need to be rectified at no cost to the Government. In other cases where the subcontractors were already engaged, such an amendment would need to be negotiated as this would affect the agreements with the subcontractors.

4.3.25 Finally, the Chair PMB suggested that the SHC and the third-party experts on the Board discuss who was to provide the PMB with the monthly progress reports as stipulated in the SCA.

Meeting held on 4 March 2019

4.3.26 The following meeting of the PMB was held on 4 March 2019. The first matter addressed was the representation of QMUL Malta on the Board. The Chair PMB noted that the QMUL Malta did not attend this meeting; however, remarked that it was superfluous for them to attend Board meetings until the construction phase commenced. Notwithstanding this, the Chair PMB referred to the original intention behind the inclusion of the QMUL Malta on the PMB, intended to allow them to monitor the construction of the hospitals in view of their centrality to the operations of the Barts Medical School.

4.3.27 The PMB was provided with an update relating to the first phase of the design process of the sites. An SHC representative on the Board referred to the Concessionaire's US delegation comprising representatives from its administration, its clinical planning team and its engineering team, who engaged with the staff at the sites to assist the SHC to better manage expectations. The SHC representative confirmed that the design teams were taking into consideration the bed quantities being discussed between Government and the Concessionaire and confirmed that the plans would reflect these considerations.

4.3.28 The SHC informed the PMB that during the third week of March, the design teams would meet the Government representatives to provide a high-level overview of the intended works to be undertaken at the sites, present the overall programme and timeframes, and indicate the forecasted commencement dates for the construction of each site. Furthermore, the SHC engaged two local architects to advise on matters relating to submission to be made to the PA. The Chair PMB stressed that until the long-term targets were set, the SHC should not ignore the works required during the interim period, especially those necessitating immediate attention.

4.3.29 Focusing its attention on the snag list, an SHC representative informed the PMB that the SHC had compiled a plan to address pending snags, some of which could only be carried out once the Anatomy Centre was vacated. Regarding the Barts Medical School, the QMUL Malta had agreed to occupy these premises from September 2019 despite being advised that the snag list would not be completely addressed. Nonetheless, the SHC representative referred to the quality controllers engaged by the Concessionaire and Mata Enterprise to oversee all the phases of construction and therefore did not envisage a significant snag list on completion of the construction of the Barts Medical School.

4.3.30 In terms of the construction of the Barts Medical School, reference was made to a visit by representatives of the QMUL, wherein they expressed satisfaction with the new set-up and project management. However, concern regarding the timely completion of the project was cited. To this end, the SHC was considering introducing night shifts to finish the project by September 2019. Also noted was that the SHC had restructured the construction program and intended to communicate the progress achieved to the PMB fortnightly. The Board was informed that the QMUL had requested additional changes to the plans, which were incorporated by the SHC. Nevertheless, the SHC representative emphasised that, in future, requests for variations should be limited for the project to be concluded on time and to avoid additional subcontractors' fees.

Meeting held on 26 March 2019

4.3.31 The next meeting held by the PMB was that of 26 March 2019. This meeting was characterised by the attendance of several representatives of Stantec, a firm specialised in the design and consulting industry, understood by the NAO as engaged by the SHC to lead the design process. During this meeting, an SHC representative provided an update on the masterplan. The PMB was informed that SHC's design teams had consolidated the feedback received during the series of discussions held with the hospital leadership, administration, and clinicians in Gozo and Malta during their first visit and developed an initial presentation providing an overview of the conditions of the buildings, a site analysis and a data analysis.

4.3.32 A Stantec representative informed the PMB that the design teams were at the strategic planning phase, proceeding cautiously and analytically to avoid drastic changes that would affect the cost and quality of the project. Technology-planning was being integrated during the early planning stages with the teams envisaging an equal extent of change in the sites. The Stantec representative described the design process as 'consensus driven', with meetings held with those responsible for the hospitals providing information regarding the existing problems and expectations. The information obtained was surveyed and categorised providing the design teams with ideas on how to better allocate space and organise the layout for improved hospital operations.

4.3.33 In terms of planning authorisation, an SHC representative informed the PMB that two local architects were involved in drawing up the high-level masterplan stage; however, it was envisaged that additional local architects would be engaged as the planning process progressed and more detailed design work was required. This was necessary as the designs were ultimately to be approved by local architects.

4.3.34 The PMB was informed that the design teams were in the process of evaluating the current state of the property at the SLH and the maintenance works required. The plan was to retain the existing structure while balancing the patient population during the construction period. The SHC deemed this to be a significant challenge given the condition of the building. On the other hand, the SHC planned to demolish the existing building at the KGRH since the analysis undertaken suggested that the building was problematic and refurbishment would take longer than the construction of a new hospital.

4.3.35 Elaborating with respect to the usage of space at the sites, a Stantec representative noted that the KGRH and the SLH had ample vacant space, while the GGH was fully occupied. This rendered the construction of the additional infrastructure required challenging, particularly when one considered the obligation to ensure the continuity of service lines. Queried with respect to medical tourism by the Chair PMB, a Stantec representative indicated that these beds would be situated on the Gozo site; however, acknowledged that the SHC was pressured to cater for the core medical demand before moving on to the provision of medical tourism.

4.3.36 The Chair PMB stated that the Government expected the SHC to deliver a presentation on the planned works in the near future as this would allow the MFH to identify the right partners to work with the SHC to ensure that the project was efficiently implemented. The SHC agreed to this request; however, the Concessionaire stated that prior to providing an official presentation to the Government, it intended to develop its plans further, especially regarding the KGRH and the SLH. The PMB agreed that prior to the presentation to the Government, the SHC would revert to the Board for guidance. The Board was informed that the Stantec design teams would return to Malta on 9 April 2019.

4.3.37 The final matter discussed by the PMB related to the KGRH. The Board was informed that Malta Enterprise had assured the MFH that it would vacate the space allocated to the SHC by the end of May. However, the SHC and the Government were yet to discuss and agree on the use and costs of the additional beds provided in the interim period.

Meeting held on 5 April 2019

4.3.38 The subsequent meeting of the PMB was held on 5 April 2019. The first issue discussed was the masterplan prepared by the SHC. The SHC explained that the KGRH had several deficiencies that were costly to redress. These included structural issues and matters relating to fire safety, among others. It was further indicated that renovating the SLH and simultaneously constructing new premises to replace the KGRH would be more cost-effective and would be completed in a shorter period. Regarding the broader timeline of the entire development, the SHC informed the Board that, from a permitting perspective, it was anticipated that the required permits for the GGH would be sanctioned more expeditiously, with a period of eight to ten months being envisaged. On the other hand, it was estimated that the permitting process for the KGRH and the SLH would take up to a year to conclude. It was therefore anticipated that construction works would commence at the GGH before those at the KGRH and the SLH, addressing the need for the GGH to be completed more imminently. The SHC planned to begin talks with construction companies in the coming months due to concerns over the supply of construction labour. The SHC was aware of the considerable demand for parking and indicated that it was still assessing how best to accommodate these requirements. Regarding medical tourism beds, the SHC noted that these would be located at the GGH. The Chair PMB informed the Board that further feedback on the SHC masterplan would be provided after its review by the MFH.

4.3.39 The second item on the agenda was the draft plan for the conversion of the premises that were to be vacated by Malta Enterprise into clinical facilities. According to the SHC, these would be vacated by the end of May. The SHC planned to accommodate the physician consultants, the medical outpatients and the physiotherapy services on the fifth floor. The space vacated on the second floor would be utilised as a medical ward that would accommodate 27 general ward beds intended to ease the burden on the MDH during seasonal peaks. The SHC intended to complete this ward before winter. These beds were over and above those projected in the SHC masterplan. The Chair PMB stated that the parties were to agree on the pricing of these beds prior to the commencement of the 2020 Budget process.

4.3.40 An update was then provided by the SHC on progress on the Barts Medical School. The Board was informed that an agreement on the items to be procured by the SHC and Barts Medical School was reached, with the latter agreeing to purchase all the furniture by June 2019. It was further noted that the procurement process for the equipment was initiated. Moreover, certain items were to be procured by Malta Enterprise but had not been included in the concession agreement, which agreement was being amended accordingly.[10] Regarding works being undertaken on site, it was agreed to increase the staff complement from 45 to 65 to meet the June completion deadline.

4.3.41 The final item on this meeting's agenda was an update on progress registered on the orthopaedic wards and the doctors' quarters at the GGH. The SHC informed the Board that the doctors' quarters were to be completed, including the delivery of furniture, by the following week. Aside from the shifting of the doctors to the doctors' quarters, supporting staff were to be relocated to the Anatomy Centre. It was also confirmed that the orthopaedics ward would be opened by the end of April 2020.

[10] By way of background, in Part 2 of the NAO's report on this concession, the role of Malta Enterprise as counterparty to the QMUL in relation to the Barts Medical School agreement, wherein it appeared on behalf of the Government, was outlined.

Meeting held on 4 June 2019

4.3.42 The following meeting of the PMB was held on 4 June 2019. The main issue on the agenda of this meeting was an update of the SHC masterplan for the sites. The Board was informed that the Stantec design team and its consultants had carried out further studies on the sites. Meetings were also held with local architects, PA representatives, resident clinicians and the sites' CEOs to attain a better understanding of the requirements and obtain direct feedback from the ultimate users of the hospitals. The aim of this exercise was to amalgamate the clinical requirements as stipulated in the SCA with the design details, such as the volume of the proposed buildings in terms of height and spread, as well as environmental considerations of the proposed footprint. The design team also constantly sought the advice of the PA to ensure that the final plans were in line with planning requirements.

4.3.43 According to the SHC, it was envisaged that the works on the sites would proceed in tandem. The SHC informed the Board that it was in the process of vetting several potential contractors in Europe who were able to undertake large-scale operations and to supply the skilled labour required for the projects.

4.3.44 Regarding the GGH, the SHC indicated that the present Psychiatric Unit, which was of historical and architectural value, was to be preserved and restored, with patients relocated in-house until the necessary works were carried out. Extensions adjacent to the present Anatomy Centre were to increase the GGH's bed capacity and house the related ancillary services required. Furthermore, a multi-level car park was planned to replace the current single-level car park. Regarding elevations, the present height of the Barts Medical School was set as the benchmark of height levels for all the buildings. The SHC maintained that the buildings would not impact the skyline and that the view of the Cittadella and the surrounding areas was being taken into consideration as preserving and enhancing these views would positively impact patients' health.

4.3.45 An update was also provided on developments at the KGRH and the SLH sites. The SHC indicated that following various studies undertaken, it was decided that the KGRH was to be demolished while the SLH was to be restored as a state-of-the-art hospital for the requirements of rehabilitation, acute care and all other clinical obligations as listed in the SCA. The KGRH was to be rebuilt in separate units to allow light and space to flow and amplify the SLH's edifice. The present outpatients, boiler rooms and the scattered buildings on the site were to be demolished to create more open space. Furthermore, the current car park and car spaces were to be removed and converted into gardens to assist in the rehabilitation of patients. According to the SHC, the PA had confirmed that there were no height limitations for the construction of a multi-level carpark. However, the SHC indicated that it intended to respect the present skyline of the SLH.

4.3.46 The Chair PMB observed that it had been over a year since the SHC had taken over the concession. It was therefore crucial for the masterplan to be finalised as soon as possible. The SHC noted that the masterplan could not be formally presented to Government before the clarification process relating to the SCA was concluded and a new agreement entered into between the parties. Considering recent technical meetings between the Government and the SHC, it was anticipated that a new agreement would be signed in the coming weeks. The SHC design team planned to provide the Government with a detailed presentation of its masterplan towards the end of July 2019.

4.3.47 Another item discussed by the Board was progress registered on the sites. The Chair PMB acknowledged the opening of the new Orthopaedic Ward at the GGH, increasing the bed capacity by 10, and the opening of the new laboratories. Regarding the KGRH, the Chair PMB referred to a walk-through on site organised by the SHC during which logistical matters in relation to an additional 27 beds and related ancillary clinical requirements were discussed with the Hospital's CEO. Also noted was the progress recorded relating to the interim financial obligation plan. The Chair PMB emphasised to the SHC that all works were to be concluded by end October 2019.

Meeting held on 31 July 2019

4.3.48 The following meeting of the PMB was held on 31 July 2019. At the start of the meeting, the Chair PMB referred to the contractual obligation under the SCA that the Board was to convene fortnightly. Despite this, the fact that several dates were proposed and the online facilities being made available, the Chair noted the repeated receipt of apologies for non-attendance. Notwithstanding the lack of a quorum for this meeting, it was decided that the meeting should be held in accordance with the contractual obligations.

4.3.49 The Chair PMB referred to correspondence exchanged with the MFH and the SHC wherein the presentation of the masterplan that was to be delivered by the latter by end July was postponed. This was now to be given on 15 September 2019.

4.3.50 An update on the revised timeframes for the Barts Medical School was provided to the PMB by Enemalta, in its capacity as technical advisor to Malta Enterprise. It was confirmed that, according to the revised program of works, completion was to be achieved by 30 October 2019.

4.3.51 It was confirmed that the following milestones would be reached until final handover by end October 2019:

a. the building was to be secured by end August;

b. testing and commissioning of the interior of the building was to be completed by the third week of September;

c. landscaping works, excluding the landscape lighting, were to be completed by the third week of September;

d. full completion of the external works was to be completed by the third week of October; and

e. the QMUL was to be granted access to start furniture installation by the second week of September.

4.3.52 The Chair PMB informed the Board that a technical meeting was to be held on site the following day, for which all stakeholders were to be present. A report would be prepared by the Chair PMB detailing the progression of the works.

4.3.53 Another matter relating to the Barts Medical School discussed during the meeting was the certification of completed works. In this regard, Enemalta informed the PMB that the testing and commissioning phase had commenced. The Chair PMB maintained that the Board was to be provided with copies of all certifications issued.

4.3.54 The PMB was informed that the maintenance agreement for the Barts Medical School premises contemplated in the concession agreements was shortly to be revised. The legal advisors for all parties had been notified accordingly.

4.3.55 Another matter discussed in earlier meetings of the PMB and again brought to the attention of the Board by Enemalta related to the clarification process of the SCA. Enemalta reiterated that the following suggestions were to be discussed during the clarification process, namely:

a. the introduction of a defects liability period of at least one year to ensure that any latent defects that arose from the project works would be rectified at no cost to the Government; and

b. the issuance of the service commencement certificate (practical completion certificate) with the inclusion of a snag list containing non-critical items that do not preclude the premises from being taken into use. Once this certificate was issued, the premises would fall under the facilities management function. A certificate of final completion would then be issued when all snags have been rectified.

4.3.56 The Chair PMB suggested that a meeting should be convened between Enemalta and the MFH to discuss these suggestions.

4.3.57 Despite being on the agenda, several items could not be discussed because no SHC representatives were present for this meeting. These related to plans for the physiotherapy section and the 29-bed extension at the KGRH and the procurement of oxygen supply for the GGH.[11]

Meeting held on 19 September 2019

4.3.58 The key issue discussed by the PMB during its meeting of 19 September 2019 was the masterplan for the GGH, the KGRH and the SLH. Integral to the planned investment was the securing of financing for the project. In this context, the SHC informed the PMB that it had held several discussions with potential investors and introduced partners such as Turner and Townsend to help build confidence in the project from a financing perspective. The SHC stated that it expected

[11] The NAO noted that reference to the additional beds at the KGRH occasionally cited 27 beds, 28 beds and 29 beds.

to have financing in place within eight to nine months. However, the lenders would demand to have the required approvals in place before financing was approved.

4.3.59 The SHC also informed the PMB that it was in discussions with various international contracting firms with significant experience in healthcare construction. A contractor was to be chosen over the next two months to assist in transitioning the project from the design phase to the construction phase.

4.3.60 Noted in the minutes was that the SHC and Stantec delivered a presentation to the PMB relating to the healthcare regeneration masterplan in Malta and Gozo, which included details about the completion of the Bart's Medical School, engagements with the investor community and the overall team structure. Acknowledged was that the design team was holding consultations with heads of departments and other users to ensure that they agreed with the final design and functionality of the hospitals. A cost confirmation exercise was to be undertaken on completion of the design stage to ensure that the designs and costs were still within budget.

4.3.61 The SHC confirmed that the PA did not find any objection in principle to the demolition of certain buildings at the KGRH and the SLH sites. The PA and the Superintendence of Cultural Heritage (SCH) also agreed in principle with the overall plans since clear zones would be created and height restraints adhered to. However, in relation to the GGH, the SHC was requested to reduce the height of the building and its proximity to the ridge. The SHC took cognisance of this feedback and planned to submit a revised proposal by end November 2019, with the intention of obtaining the relevant permit by April/May 2020. Regardless, planning applications for all sites were due to be submitted to the PA by early 2020 at the latest. The Chair PMB indicated that the MFH ought to have visibility over the process to facilitate meetings with the PA.

4.3.62 The SHC confirmed its intention to engage one contractor to carry out the works on the Malta and Gozo sites simultaneously. According to the initial timelines, construction works on the KGRH and the SLH sites were to be completed by end 2022, while the refurbishment of the existing buildings was to be concluded within a further six months.

4.3.63 In terms of the planned works that were to be undertaken at the GGH, Stantec explained that it was the SHC's intention to create a new centre for acute care and to refurbish the existing building. The SHC intended: to increase patient bed provision from 273 to 425 beds (including those planned for acute and geriatric care); to enhance the site to support the medical school; to enhance the provision of acute services; to establish a disaster centre for Gozo with expanded acute care services; and to integrate a helipad to enhance emergency transfer capabilities. In addition, the SHC planned to create zoning and campus cohesion by creating a unified entrance integrating the new building with the existing one.

4.3.64 Further details relating to the GGH were provided to the PMB. Noted in this respect was that the existing building would house 200 beds, comprising 40 adult mental health beds and 160 geriatric beds. The new building would house another 225 beds, consisting of 89 for acute inpatient care, 16 for obstetrics, 10 for paediatric acute care, 20 ICU beds, 25 for rehabilitation, 15 for psychiatric patients and 50 for medical tourism. The SHC intended to improve patient privacy by reducing the number of four-bed rooms. Furthermore, the emergency department would be located above the operating rooms to ensure that key relationships met clinical needs.

4.3.65 The SHC noted that the updated plans required less patient movement than originally planned and reduced the construction phase to 14 months.

4.3.66 Regarding the SLH, the SHC informed the PMB that it intended to expand patient bed provision from 300 to 462, comprising 160 beds for rehabilitation; 12 beds for dermatology and 290 geriatric beds, which were to be consolidated in one building. The inpatients facility was to be set up in the new building to be constructed at the GGH.

4.3.67 The Stantec representative explained that by demolishing the old, unscheduled buildings on the GGH site, the SHC would create legible zoning between clinical and affiliated healthcare use, enhance permeability, urban integration and access into the site, and ease congestion. Regarding the SLH, Stantec noted that only the main building and the orthopaedics building were listed and that the outpatients building was to be demolished in the first stage of construction. The PMB was informed that although in the short-term the SLH site would have less buildings, the SHC intended to increase the capacity of this site and therefore reserved the right to build additional buildings in the future.

4.3.68 The Chair PMB expressed satisfaction with the masterplan's design and the relocation plan for patients and acknowledged the SHC's commitment to the project. The Board agreed that the masterplan would be presented to the Minister for Health.

4.3.69 An update regarding the revised timeframe for completion of the Barts Medical School was provided. The Chair PMB informed the Board that she was regularly receiving updates in this respect and that QMUL Malta had provided positive feedback regarding the timeframe. The SHC and Enemalta confirmed that handover of the premises was to take place on 18 October 2019, while the transfer to the new campus was scheduled to commence on 22 October 2019.

4.3.70 Confirmed in the minutes of the PMB was that QMUL Malta had agreed to assume responsibility for the maintenance and management of the facilities of the Barts Medical School. The SHC expressed agreement with this arrangement. Nevertheless, the SHC noted that it would be present on campus to resolve any concerns raised. Furthermore, the SHC planned to develop policies of expectation for the overall care of the facility to make sure that the building is maintained in an appropriate condition.

4.3.71 The PMB was informed that the service commencement certificate for the Anatomy Centre had been issued. Also noted was that the SHC planned to finalise its oxygen supply procurement at the GGH by February 2020, pending review by the CPSU.

4.3.72 Noted in the minutes of the PMB was that the SHC intended to finish the planning and execution of the physiotherapy section at the KGRH when works at the Barts Medical School were completed. Another matter discussed in respect of the KGRH was the 29-bed extension. The SHC indicated that it would commit to action this when discussions on the matter with Government were concluded.

4.3.73 The Chair PMB proposed the temporary merger of the PMB and the MMB, since the same representative sat on both boards. The SHC expressed agreement in this respect and added that having a single governing body to handle the project monitoring and maintenance would be more practical.

Meeting held on 20 September 2019

4.3.74 The PMB was reconvened a day later, that is, on 20 September 2019. Also in attendance were the Minister for Health and the CEO FMS. During this meeting, the SHC delivered a presentation of the masterplan for the sites.

4.3.75 The key headlines achieved and outlined in the presentation delivered by the SHC were the handing over of the Barts Medical School on schedule, the completion of the masterplan, the support gained from the PA, the positive capital market interest generated and the setting up of the project development team. Other matters delved into related to the programme and delivery roadmap, the development considerations pertinent to the GGH, the KGRH and the SLH, and the structures of support and plans key to project execution.

4.3.76 Feedback was provided by the Minister for Health and the CEO FMS. The Minister for Health expressed concern in relation to the plan to relocate the Anatomy Centre to make way for the new acute building at the GGH. He anticipated that this relocation would have political repercussions and therefore advised the securing of approval at a higher level. In response, the SHC representative explained that the Anatomy Centre should be demolished and rebuilt beside the Barts Medical School to reduce the construction time at the Gozo site. Working around the existing Anatomy Centre would extend construction time by over a year and would also increase the stages of shifting of patients. It was therefore agreed that the SHC would document the advantages and disadvantages of removing or retaining the existing Anatomy Centre at the GGH. In turn, the CEO FMS suggested that the multi-storey carpark be constructed below street level. The SHC indicated that the viability of this option would be determined on conclusion of the geological studies.

4.3.77 Referring to the masterplan, the SHC representative indicated that the SLH would be completed within 23 months from the commencement of construction works. The existing buildings at the GGH would also be refurbished within 23 months, with a further 16 months required for the construction of the additional acute building. It was envisaged that the construction on both sites would be completed within 39 months.

4.3.78 At the request by the Minister for Health for an approximation of the overall investment to be made, the SHC confirmed that according to Turner & Townsend's calculations, the overall project would cost between €290,000,000 and €310,000,000. However, this estimate would be confirmed by the contactor once engaged.

4.3.79 The PMB resolved that the masterplan would be endorsed by the Board once the designs were agreed to by the Ministry.

4.3.80 The final item discussed by the PMB related to the refurbishment of the Physiotherapy Department at the KGRH. The Minister for Health referred to the agreement between the SHC and the Malta Union for Midwives and Nurses, which indicated that the refurbishment of the Physiotherapy Department was to be concluded by end October 2019 and warned that any delays in this regard might lead to industrial action. The SHC confirmed that the plans had been concluded and that the team would start works at the KGRH following the transition phase at Barts Medical School. The Minister for Health insisted that these works should start imminently.

Meeting held on 16 October 2019

4.3.81 The next meeting of the PMB was held on 16 October 2019. During this meeting, the SHC updated the PMB on its efforts at securing financing and noted that prospective lenders would require all regulatory approvals and price certainty prior to providing a final commitment for funding. The Chair PMB stated that this process would take at least 12 months; however, the SHC maintained that this timeframe could be shortened. In terms of planning, the SHC indicated that it intended to submit the plans for both sites simultaneously and noted that the PA had requested a transport impact assessment for the KGRH and the SLH sites.

4.3.82 The subsequent matter discussed by the PMB was the revision of the masterplan and its effects on the GGH. The Stantec representative referred to the Government's final decision on the layout and explained that this necessitated that the psychiatric hospital be completed first. He further noted that the helipad would either remain in Xewkija or be relocated on the roof of the new acute hospital; however, the latter option might be resisted by the PA and would significantly raise costs. As this would require the displacement of psychiatric and geriatric patients, the SHC planned to create a temporary building on site with 94 beds to house these patients for three to four years. In addition, the Stantec representative informed the PMB that the PA requested the SHC to submit a separate application for the construction of a new road as part of the broader concession arrangement to ease traffic.

4.3.83 The PMB was provided with an update on the plans and the meetings held with the PA. Noted was that the SHC intended to submit a planning application in February 2020, understood by the NAO as referring to the GGH. In respect of the KGRH and the SLH, the SHC indicated that it intended to submit individual plans for these sites rather than requesting approval for the overall masterplan.

4.3.84 The Stantec representative informed the PMB that the OPM was facilitating meetings with the PA, the Environment and Resources Authority (ERA) and the SCH regarding the SLH. Noted in the minutes was that from these meetings it transpired that there was no need for an environmental impact assessment but that a transport impact assessment was required. The SHC informed the PMB that the possibility of creating an underground parking on site was investigated and that the outpatients building was identified as the best location since this was currently not suited for any clinical or management facilities. However, the SHC acknowledged that the SCH could oppose the demolition of this building. The Chair PMB requested that the MFH be provided with another presentation the following month.

4.3.85 An SHC representative informed the PMB that the handover of the Barts Medical School was on track and that the first students were to start using the premises on 28 October 2019.

4.3.86 The PMB was provided with an update on the procurement of oxygen supply at the GGH, while the discussion of matters relating to the KGRH was postponed. Appended to the minutes of the PMB were several presentations drawn up by the SHC and Stantec. Two of the presentations related to the placement of the Anatomy Centre, one was a copy of the presentation delivered by the SHC to the PMB and the other related to the planning principles, the development programme and schedule for the KGRH and the SLH.

Meeting held on 20 November 2019

4.3.87 The final meeting of the PMB in 2019 was held on 20 November 2019. An updated presentation of the masterplan was shared with the PMB. The key headlines covered in the presentation by the SHC comprised updates relating to the masterplan development summary and schedule, focus on the Anatomy Centre, progress on the number of beds at the KGRH, site plan and campus renderings of the GGH and the SLH, the SLH physiotherapy function and matters concerning toxic waste disposal.

4.3.88 Recorded in the minutes was that, with respect to the GGH, the SCH had permitted the SHC to retain the St Theresa Campus. Reference was also made to discussions held with the QMUL Malta regarding the possibility of relocating the Anatomy Centre closer to the Barts Medical School. The Stantec representative informed the PMB that discussions were also ongoing with the SCH as regards the future of the SLH outpatients building and the boiler room.

4.3.89 Various queries were made by the Consultant MFH in relation to the multi-storey car park that was to be constructed at the GGH, as well as the outpatients building, the mortuary and the surgical centre at the SLH. The Consultant MFH also enquired about the research and innovation centre referred to in the concession framework. The Chair PMB acknowledged that attempts to clarify this obligation were in vain and that this issue was to be discussed with all stakeholders. In this context, the SHC representative noted that the KGRH and the SLH sites had capacity for expansion and therefore additional buildings could be incorporated in phase two of the project.

4.3.90 The PMB's attention then shifted to the masterplan development schedule. The Stantec representative explained the planned project timeline, which envisaged completion of the SLH construction by Q2 2022, completion of the GGH construction by Q3 2022 and the extension and refurbishment of existing buildings at the GGH by Q3 2024 (Figure 11 refers). The Chair PMB informed the Board that the Government was committed to vacate the outpatients building and any other space currently occupied by its employees within six to eight months from the sign-off of the plans.

Figure 11 | SHC project timeline, 2020-2025

4.3.91 Reference was then made to the Anatomy Centre. The Chair PMB stated that the Government would only consider the relocation of the Anatomy Centre on site if it was not the first building to be demolished during the construction phase, specifying that the Government sought visibility over progress being registered at other parts of the GGH before this potential demolition took place. The SHC stated that accommodating the Government's request would be challenging; however, would endeavour to provide an alternative proposal on the phasing of the construction.

4.3.92 The PMB was provided with an update regarding the additional beds to be allocated at the KGRH. The Stantec representative informed the Board that the SHC would add 28 interim beds at the KGRH in three phases and proceeded to outline the logistical arrangements made. The SHC planned to complete this process by end January 2020 and confirmed that these beds were to be temporary.

4.3.93 The Stantec representative provided the PMB with additional information relating to the integration of the existing buildings of cultural heritage on the sites with the new build, particularly in view of the SHC's commitment to construct hospitals that lasted beyond the concession period.

4.3.94 The Chair PMB informed the Board that asbestos was found in the area that was being restored to accommodate the extra physiotherapy beds at the SLH. The SHC indicated that the removal of the asbestos was to be completed by the following week, when work in the area could resume. Furthermore, the SHC explained that a survey was to be conducted to assess where asbestos could be found in the surrounding areas; however, reference was made to the earlier certification of the SLH main building. Regardless, the PMB was informed that the project relating to the extra physiotherapy beds would be completed within 15 weeks.

Cessation of meetings of the Project Monitoring Board and its eventual reconstitution

4.3.95 After the PMB meeting held on 20 November 2019, no evidence of other meetings held by the Board in 2019, 2020 and 2021 was provided to the NAO despite the requirement stipulated in the SCA for the PMB to meet on a fortnightly basis during the execution of the works on the sites. Notwithstanding this shortcoming, the NAO acknowledges that the utility of the PMB was rendered somewhat superfluous following the cessation of works resulting from the impasse between the Government and the SHC as a result of stalling negotiations. This understanding was confirmed by the MFH, with the Ministry indicating the change in Prime Minister and the subsequent change in negotiation strategy adopted, the effect of the pandemic, and the uncertainty brought about by successive attempts at renegotiating key elements of the concession, all bearing impact in this respect. The PS MFH noted that the relevance of the PMB and the other committees of oversight was rendered secondary by the more fundamental and significant difficulties encountered in the implementation of the project, primarily that the SHC had not secured the required financing.

4.3.96 Following further enquiries made by the NAO, an element of context to this gap in meetings of the PMB was traced in documentation submitted by the MFH. Correspondence dated 18 November 2021 rendered evident the efforts of the PS MFH to reconstitute the Board. To this end, the PS MFH requested the President SHC Malta to nominate three representatives to sit on the PMB, two of which were to be experts in engineering and/or architectural fields. The Chair Barts Medical School was also requested to nominate a member to the Board. Finally, the PS MFH nominated a member to sit on the PMB in representation of Government, who was to serve as Chair. The term of the appointments to the Board was of three years, with the terms of reference as emanating from the SCA provided.

4.3.97 The President SHC Malta sought to clarify the basis for the appointment of new members to the PMB. Of note to the NAO was the confirmation that the Board had last met on 20 November 2019. In response, the PS MFH referred to the obligations set out in the SCA whereby the PMB was to meet at least every two weeks to discuss reports prepared by the Concessionaire and to issue monthly and quarterly progress reports detailing the overall status, staff assessment, project summary, challenges, key issues and tasks, among others. The PS MFH affirmed that since none of the reports referred to had been issued for at least the past year and since the Board had not met post November 2019, the PMB as prior constituted was deemed to be defunct. Hence, a new Board was to be constituted.

4.3.98 On 10 December 2021, the President SHC Malta nominated the three members that were to represent the Concessionaire on the PMB. The nomination by the Chair Barts Medical School had been submitted a few weeks prior, that is, on 25 November 2021, wherein the School's representative and his deputy were identified.

4.3.99 The first meeting of the reconstituted PMB was held on 17 March 2022. The NAO noted that following its reconstitution, the PMB elected the Government representative as its Chair, discussed the terms of reference that were to guide it, and provided an update regarding the Barts Medical School. At this stage, the School was fully operational and accounted for a student population of approximately 250.

4.3.100 Although this meeting fell outside of the scope of this audit, the NAO's attention was drawn to a statement delivered by the President SHC Malta during the PMB meeting of 17 March 2022 and appended to the minutes thereof. The President SHC Malta asserted that the initial investment committed by the VGH was that of €220,000,000, to cover among other elements the cost of construction. However, she noted that as at June 2018, that is, three years after the concession had been awarded, no major capital expenditure had yet been incurred on the project. As a result, key contractual terms of the SCA, such as the construction milestones, were already in default and, despite this, no action was taken by the Government.

4.3.101 The President SHC Malta noted that the SHC had undertaken a series of initiatives, including redevelopment and refurbishment projects and extensive investment in plant and equipment, some of which were still ongoing. According to the President SHC Malta, the value of these initiatives had been established at approximately €60,000,000 by Price Waterhouse Coopers Malta. Elaborating further in this regard, the President SHC Malta stated that other redevelopment works had stalled for several reasons, not least the fact that discussions with the Government on the renegotiation of the concession had not reached any conclusion since the SHC assumed control.

4.3.102 Unless the concession was restructured in any of the forms that had till then been explored, the President SHC argued that it would not be possible to achieve that expected of the concession, that is, to among other objectives, construct, reconstruct and embellish the GGH, the KGRH and the SLH. Pertinently observed by the President SHC Malta was that no financing was available in the market to undertake the investment required for the construction of the hospitals with the concession's current cash flow model, which from the outset was based on unrealistic, or even outrightly false, income assumptions and projections. Notwithstanding this, the SHC reiterated its commitment to support healthcare in Malta.

Oversight by the Health Construction Committee

4.3.103 The HCC was to be controlled by the Government and represent its interests during the phase of the concession when works were being carried out. Queried by the NAO as to why the HCC failed to convene between February 2018 and February 2019, the MFH cited reasons similar to those presented in paragraph 4.3.9, that is, the Ministry's focus was on more critical matters in the implementation of the concession. As indicated in paragraph 4.3.22, during the PMB meeting of 8 February 2019, the Chair PMB suggested that for reasons of practicality, the HCC and the PMB were to merge until the achievement of the milestones. This arrangement remained in effect until 20 November 2019, the date on which the last meeting of the PMB – and therefore of the assimilated HCC – was held during the period under review.

4.3.104 Between November 2019 and November 2021, the HCC, be it in the assimilated format with the PMB or autonomously, did not meet. The MFH attributed this lapse to several factors, namely, the different approach to negotiations following the change in Prime Minister, the effect of the COVID-19 pandemic and the pervasive difficulties encountered in seeking to reach agreement with the SHC. These factors rendered secondary the priority assigned by the Government to the HCC.

4.3.105 Based on information submitted by the MFH, the NAO established that the HCC was constituted independent of any other related committee towards the end of 2021, with its first meeting held on 10 December 2021. The HCC was composed of an Advisor to the Minister for Health as Chair, and the Chief Projects Officer FMS and the DG (Strategy & Implementation) MFH as members. In response to queries raised by the NAO as to why the HCC was hived off from the other committees at this juncture, the MFH indicated that the Ministry was directed to strictly abide by the provisions stipulated in the SCA and therefore opted for this separate set up of committees.

Meeting held on 10 December 2021

4.3.106 The Chair HCC initiated the first HCC meeting by outlining the objectives of the Committee as defined in the SCA. In essence, the HCC was to represent the interests of the Government during the execution of works and act as the SHC's point of reference in relation thereto. The HCC acknowledged that it was necessary for the Committee to work closely with the SHC and the PMB to enable access to information relevant to the progress registered in terms of the construction obligations. Emphasised by the HCC was that, following the change of control of the concession, the SHC assumed all contractual obligations emanating from the SCA.

4.3.107 The first item on the agenda discussed by the HCC was an overview of construction projects undertaken to date in relation to the concession. The Chair HCC referred to the completion of the Barts Medical School and the Anatomy Centre in 2019. Both sites were effectively run by the QMUL and therefore the HCC noted that it had discharged its duties to completion, with the responsibility for the monitoring, maintenance and upkeep of these properties now under the remit of the MMB. The members of the HCC highlighted that for the Committee to discharge its function effectively, it required access to information necessary for visibility over past and present construction obligations and related undertakings and sought clarity regarding the effective discharge of completed elements of the concession.

4.3.108 As to the way forward, the HCC noted that following the completion of the Barts Medical School and the Anatomy Centre, minimal progress, if any, was attained in terms of the remaining construction contractual obligations. The HCC contended that although the masterplan for the building, redevelopment and restoration of the GGH and the KGRH/SLH sites had been drawn up, no tangible attempts to initiate works had been made by the SHC. In terms of the provisions of the SCA, the HCC resolved to request the SHC to provide the Committee with updated reports and plans concerning current and future construction works. These would enable the HCC to evaluate progress registered against contractual obligations stipulated in the SCA. To this end, the Chair HCC was to request the SHC to report on the current state of affairs and plans, including permits, designs and anticipated time frames, for the completion and delivery of the concession milestones.

4.3.109 The next meeting held by the HCC was that of 19 January 2022. Although this meeting fell outside of the audit period under review, for reasons of completeness, an update on matters raised during the preceding meeting is provided. The Chair HCC informed the Committee that the request to the SHC had been submitted; however, no reply was forthcoming. Nevertheless, the Chair HCC indicated that she had also been re-appointed Chair PMB and had raised the matter during a meeting of the Board. Requested to provide an update on the construction works underway, and the plans and timeframes envisaged, the President SHC Malta presented a statement by the SHC. The NAO established that this statement was again presented in the subsequent meeting of the PMB held on 17 March 2022, information pertaining to which is presented in paragraphs 4.3.101 to 4.3.103.

Oversight by the Health Management Committee

4.3.110 While the HCC was assimilated into the PMB, this was not the case for the HMC, which Committee remained not constituted following the transfer of the concession to the SHC. By way of background, the HMC was to be managed internally by the Government and was to serve as the SHC's point of contact for matters relating to the SCA. The NAO established that, despite the requirement set out in the SCA for the setting up of the HMC after the achievement of the first concession milestone (in fact achieved in June 2016 through the submission of the handover plan by the VGH), the Government did not appoint this Committee following the change of control by the SHC.

4.3.111 The MFH confirmed that the HMC was not reconstituted and acknowledged that this created a lacuna in the framework of oversight. It was in this context that the MFH sought to adopt a pragmatic approach to address the situation and elected to set up an internal ministerial committee, referred to as the PC. The MFH noted that the functions of the PC overlapped those of the HMC in terms of the safeguarding of patient services. While conceding that the solution was not optimal, the MFH maintained that the PC assisted the Ministry in addressing serious operational issues that would otherwise have remained unresolved.

4.3.112 In terms of its composition, the PC was chaired by a former minister and notary by profession, while its members were the PS MFH, the Consultant MFH, the DG (Finance & Administration) MFH, a Projects Director MFH, the Chair PMB and a legal advisor to the Ministry. Another lawyer served as the PC's secretary.

4.3.113 The PC was first convened on 6 July 2018 and met regularly up until end 2019, with its last meeting held on 22 November 2019. To facilitate reporting on the workings of the PC, the NAO has aggregated meetings held by this Committee on a quarterly basis. The ensuing paragraphs capture the issues deemed most noteworthy by this Office.

Quarter 3, 2018

4.3.114 During the first meeting of the Committee, the Chair PC provided a brief background on the Committee's role and highlighted that there was a state of uncertainty and a lack of strategic vision for the concession. Notwithstanding this, noted was that the structure of the concession was in place and that there existed a degree of comfort regarding the €51,000,000 cost to Government. Nevertheless, the renegotiation of the agreements remained critical.

4.3.115 Aside from the initial meeting of the PC held on 6 July 2018, during Q3 2018, the Committee met on 11 July 2018, 3 August 2018, 24 August 2018, 31 August 2018, 13 September 2018 and 28 September 2018. During these meetings, the PC's role in guiding and formulating the Government's approach towards negotiations with the SHC was evident. The PC identified the medical services and amenities that ought to be prioritised, the changes in services in connection with the medical tourism function, and the retention of the primary healthcare function in Gozo by the Government and its substitution with other services that were to be provided by the SHC. The PC recommended that in lieu of the originally contracted medical services, the parties were to identify alternatives that were more in line with the Gozitan community's requirements, such as drug rehabilitation, palliative care, a nursing home and long-term geriatric care.

4.3.116 Further technical input relating to the clinical aspect of the concession was provided by the Consultant MFH, who updated the PC regarding the outcome of a meeting held with the Minister for Health. In his report, the Consultant MFH referred to the major problems relating to acute services at the GGH, which mainly arose from the occupancy of approximately half of the hospital's acute bed capacity by long-term geriatric patients. Feedback provided by the Minister for Health indicated that the focus should be on the essential requirements needed for the hospitals rather than management issues at this point. In this context, the PC was cautioned that the changes made to the list of medical services requested by the Government would influence the hospitals' designs and would ultimately affect the capital expenditure. The PC decided that the Consultant MFH was to prepare a list of the proposed activities as agreed with the Minister for Health and refer this to the Government's health advisors for their input.

4.3.117 Of note to the NAO was that, according to the minutes of the PC meeting held on 6 July 2018, the Chair PC stated that the due diligence of the SHC was ongoing and was to be concluded by end July 2018. This was deemed incongruent by the NAO for the only due diligence report made available to this Office was dated 1 December 2017. Requests submitted to the MFH to clarify this inconsistency remained unaddressed.

4.3.118 Several issues in connection with the LSA were discussed by the PC. Foremost in this respect were matters relating to arbitration proceedings arising from disputed claims concerning payroll submitted by the Concessionaire and the anomaly in the headcount of the resources leased by the Government to the SHC. Both these matters were addressed in detail in Part 2 of the NAO's report. Also noted by the PC were the challenges faced in terms of doctor shortages at the GGH, with several measures intended to mitigate such a situation highlighted.

4.3.119 Another key development was noted in the PC meeting held on 11 July 2018, wherein the Advisor MFH presented the Committee with an Evaluation of Risk Report. This report highlighted the risks faced by the Government in connection with the concession, duly categorised under capital expenditure, operational and medical issues. The PC resolved that this Report be presented to the Minister for Health. The NAO delved into this Report, cited as the Risk Register, in Part 2 of this audit.

4.3.120 The PC also discussed the contested issue of payment for medical supplies. While the SHC requested reimbursement for supplies in excess of €2,000,000, the Committee maintained that the Government was not to pay this cost since it was included in the €51,000,000 payment made to the SHC. Of interest to the NAO was the anomaly in the HSDA highlighted by the PC. This anomaly was created by revisions to the HSDA through the Addendum entered into in December 2015, whereby substantial reductions in the services that were to be provided by the Concessionaire were made without removing the obligation of the Concessionaire to provide medical equipment for such services. The PC indicated that this contractual incongruence to Government's favour was to be considered during negotiations with the SHC.

4.3.121 Several concerns were raised by the PC regarding the monitoring of the SHC's performance, service delivery and claims for payment. The Chair PC emphasised the importance of Government having full access to the SHC's data, for otherwise it would be at the mercy of the Concessionaire for project and patient data, as well as the reconciliation of accounts and invoices. Despite this, the PC lamented that the Government had no visibility over the level of service claimed as provided for certain deliverables. Of concern to the NAO was that stated by the Consultant MFH in the PC meeting held on 31 August 2018, wherein he claimed that the SHC was not monitoring performance or taking initiatives to improve performance at the GGH, thereby concluding the situation did not change with the transfer of control from the VGH to the SHC.

4.3.122 A regular item on the agenda of the PC was the performance guarantee that was to be provided by the SHC. Concerns expressed in this regard centred around instances when Government was exposed to risk as no guarantee was in place, and others relating to the regularity of the guarantee provided. In the latter case, specific reference was made to the political call by the Minister MOT to accept the assurance provided by the SHC despite the fact that the document provided was a financing agreement and not a performance guarantee. Captured throughout the proceedings of the PC was that the PS MFH was uneasy about continuing to issue payments to the SHC in view of the Concessionaire's failure to submit a suitable performance guarantee and was to seek the advice of the Attorney General. Nevertheless, the PC reiterated that the health consideration of local patients was an absolute priority and, in view of the MFH's responsibility to ensure that operations were provided in an uninterrupted manner, would continue effecting payments to the SHC. The Permanent Secretary MFH agreed with that discussed and confirmed that the Minister for Health was fully aware of the matter and the decisions taken by the PC.

4.3.123 Throughout Q3 2018, the PC was regularly updated on progress registered in terms of the construction of the Barts Medical School. Developments concerning this aspect of the concession are reported in detail in the proceedings of the PMB.

4.3.124 During the final meeting held in Q3 2018, that is, on 28 September 2018, the PC was informed that the SHC had provided its final proposed amendments to the concession agreements, which amendments would result in substantial changes to the agreement between the parties. The PS MFH stated that the SHC were informed that the drafting process would begin after the principles were agreed on. Expressing agreement, the SHC representatives proposed that the main amendments be discussed in two clusters. The first cluster comprised clinical issues, following which a draft would be prepared and referred to the Minister for Health for approval. The second cluster would include negotiations relating to the architectural, engineering, design and financial aspects, and the performance guarantee.

Quarter 4, 2018

4.3.125 The PC continued to meet regularly in Q4 2018, with meetings held on 5 October 2018, 19 October 2018, 9 November 2018, 30 November 2018 and 7 December 2018. In the review of the minutes of PC meetings, the NAO noted that the key issues addressed by this Committee related to its continued role in guiding the Government in negotiations with the SHC, its monitoring of diverse aspects of the concession and its focus on financial issues in connection with the concession.

4.3.126 The focus of the PC throughout Q4 2018 remained the ongoing negotiations between the Government and the SHC. The Committee asserted that the original terms of the concession agreements still stood, unless modified by mutual agreement. However, in the case of any reduction in service, the Government was to be adequately compensated. Cited as an example in this regard was the removal in responsibility for primary health of the SHC, and that the corresponding savings in terms of infrastructure registered by the Concessionaire were to be compensated to Government.

4.3.127 Noted were several other changes to the contractual terms discussed by the PC. The revision in clinical services proposed in the ongoing negotiations resulted in the SHC no longer being required to provide corresponding equipment. In light of this revision in clinical services, the PC mandated the setting up of a technical sub-committee to assess the financial and economic implications of the proposed clinical changes in the concession agreements and to provide advice to the Committee. Noted by the PC was that any revision in fees payable to the SHC were to consider the profit margins realised by the Concessionaire that would be required to finance the project's capital expenditure.

4.3.128 Another contractual term subject to revision discussed by the PC was the allocation of beds at the GGH and the KGRH, and pricing revisions in the case of the latter. Regarding pricing, the Committee was informed that the capped payment structure proposed by the MFH was intended to lead to improved performance and efficiency, though the structure could lead to higher costs, estimated at €8,000,000 annually. The PC further noted that Malta's aging population required the additional long-term geriatric patient beds that were proposed by the SHC at the KGRH. Although the SHC's proposed cost, at €300 per bed night, was higher than that of private homes, this additional cost could be justified when comparing the equivalent facilities to be provided.

4.3.129 In terms of its monitoring function, the PC noted progress registered at the GGH in services provided to outpatients by certain departments at the GGH. However, concerns were also raised regarding the performance of other departments, most notably the Ophthalmology Department that had a waiting time of 36 weeks. According to the PC, this and other issues of concern at the GGH required direct Government intervention to avoid the situation becoming critical.

4.3.130 The financial situation of the SHC was a matter discussed with regularity by the PC in its meetings held throughout Q4 2018. Noted by the PC was the financing that the SHC had obtained through Government payments and through a loan secured with the BOV. In the case of the former, the SHC had stated that it was utilising funds obtained from the Government to repay past creditors, while the latter loan of €22,000,000 was also being utilised as working capital in addition to its use to fund the construction of the Barts Medical School.

4.3.131 Of concern to the NAO was that registered in the meeting held on 19 October 2018, wherein the PC asserted that despite requests made to the SHC, the Concessionaire's management accounts were not provided to the Government due to an ongoing audit. In view of this, the SHC was requested to provide a breakdown of how the funds paid by the Government were being allocated. Records of the subsequent meeting held by the PC on 9 November 2018 capture the frustration of the Committee at the Concessionaire's failure in providing the information sought.

4.3.132 An element of progress was registered thereafter, for the Advisor MFH indicated that following several meetings with the SHC, a position paper regarding the Concessionaire's financial position had been drawn up. The Advisor MFH highlighted that given the SHC's current financial situation and projections for the transition period, the Concessionaire would not be able to obtain a bank loan. To this end, the Advisor MFH suggested that to improve its financial situation, the SHC should provide additional services to the Government to justify additional payments and to attempt to shorten the transitionary period.

4.3.133 Late in 2018, the PC was informed of the outcome of a cost comparison between the MDH and the SHC-run hospitals. The comparison indicated that the SHC's expenses were comparable to those incurred at the MDH three years prior and therefore the increase in expenditure in relation to the KGRH beds, amounting to €8,000,000, could be justified. Moreover, the PC was informed that the payment structure that was to be proposed by the Government was to be sufficient to generate profit and cashflow to meet the Concessionaire's financial requirements.

4.3.134 The refusal of the SHC to present its audited accounts to the Government persisted, for in the meeting held on 7 December 2018, the PC noted that the Concessionaire had refused to provide the MFH with the required documents as the SHC had not accepted all liabilities, particularly those subject to litigation.

4.3.135 Other matters discussed by the PC related to the GGH. Highlighted were the inefficiencies that existed at this hospital, with the PC noting that the management of the GGH, even under the control of the SHC, was deemed to be weak and in need of improvement. The Committee identified the reduction of idle time and the maximisation of value for money, possibly by increasing KPIs and benchmarking against the MDH, as means to address inefficiencies at the GGH. Another GGH-related matter discussed with some regularity by the PC was the helicopter service, most notably efforts at facilitating an agreement between the SHC and the Armed Forces of Malta in instances of helicopter downtime. Towards the end of 2018, the PC was provided with an update on progress registered with respect to the construction of the Barts Medical School, noting that the Anatomy Centre had been signed off by the project engineers and that the School was scheduled for completion by July 2019.

Quarter 1, 2019

4.3.136 Meetings of the PC resumed in 2019, with the Committee convening on a regular basis. In all, the PC met 11 times during Q1 2019, as meetings were held on 4 January 2019, 9 January 2019, 18 January 2019, 25 January 2019, 1 February 2019, 15 February 2019, 28 February 2019, 6 March 2019, 13 March 2019, 22 March 2019 and 29 March 2019. The PC continued to guide the Government in its negotiations with the SHC, discussed possible revisions in contractual terms, monitored several operational aspects of the concession, kept track of developments relating to the SHC's financial situation and addressed issues emerging in connection with Technoline Ltd.

4.3.137 However, the PC's focus during Q1 2019 was on revisions considered with respect to the concession fee structure. Noted was that an Economic Consultant was engaged to prepare a report detailing costs that were to be incurred by Government, necessary in determining whether the concession agreements were feasible. The report titled 'A proposal regarding the fee structure to be adopted in the operational phase of the hospitals concession agreement' was presented to the PC on 9 January 2019.

4.3.138 The report proposed a system of pricing and established benchmark values that could be applied. Moreover, it illustrated that through a system of cost efficiency, activity margins and acceptable return on capital, the project could be financially feasible and allow for a buffer to absorb risks. The pricing system comprised activity, capacity and fixed bases for charging that would result in a cost to Government of approximately €74,000,000. The key financial results arrived at were: that the sum of the discounted net cash flows was under €265,000,000; that this compared with an expected investment cost of around €220,000,000, thereby providing a positive return at a benchmark weighted cost of capital of six per cent; and that this provided a buffer of approximately €45,000,000 to absorb risks in the project development and implementation phases.

4.3.139 The PC was informed that the report was referred to the Minister for Health, who deemed it an acceptable negotiating position to adopt with the SHC. In a subsequent meeting, the PC was advised that the MFH and the Economic Consultant had revised the proposed payment mechanism by excluding depreciation, which led to an internal rate of return of 9.5 per cent. Noted by the PS MFH in the PC meeting held on 13 March 2019 was that although the proposed payment structure seemed satisfactory to both parties, Eurostat's decision regarding the statistical treatment of the concession's debt would ultimately determine its applicability. Although the Economic Consultant expressed reservations regarding Eurostat's reclassification of the project as off-balance sheet, the Committee resolved to refer the matter to MFIN for guidance prior to referral to Eurostat.

4.3.140 Aside from matters relating to the revised payment structure, the PC continued to guide the Government in its negotiations with the SHC on diverse aspects of the concession. Towards the end of Q1 2019, the PC was presented with a document drawn up by the Consultant MFH capturing the status of negotiations at that point, highlighting new services to be introduced and others to be removed that were agreed on by both parties, as well as services and clinical issues that warranted further review. Noted in this respect was that the main point of contention between the parties was the ratio of rehabilitation beds and long-term care beds at the KGRH and the SLH. The Government was proposing a rate of €300 per day for rehabilitation beds and €180 per day for long-term care beds. While the SCA provided for 80 rehabilitation beds and 370 long-term care beds, the SHC requested these to be revised to 250 and 120, respectively, resulting in an additional payment of €7,000,000 to the Concessionaire. The Consultant MFH advised the MFH to agree to increase rehabilitation bed capacity to 160, as this was consistent with the KGRH's current occupancy, and to reduce long-term care beds to 290. This would result in an additional expense of €3,500,000.

4.3.141 The discussion of several matters relating to the operational aspect of the concession attested to the active role of the PC in this regard. The PC noted that the monitoring of payments made by the Government to the SHC was hampered by the Concessionaire's failure to provide relevant financial records. This hindered the Government in ascertaining the SHC's utilisation of funds, which led to the Committee to resolve to engage an external auditor to mitigate this risk. Notwithstanding this, the PC remained active in ensuring that the SHC submitted audited financial statements. Another aspect identified by the PC was the lacuna in oversight by Government of the uptake of medical supplies by the SHC and the need to streamline eligible supplies made available to the SHC to align with the Government's formulary. In terms of the LSA dispute, the major development that occurred during Q1 2019 was the engagement of an audit firm to quantify the discrepancy arising in connection with this dispute and the finalisation of the report by the said firm. This matter was reported in detail in Part 2 of the NAO's report on the concession.

4.3.142 As regards the GGH, the PC noted progress achieved in certain aspects and scope for improvement in others, indicated that the air ambulatory service downtime issue was addressed with the SHC providing the relevant information to the Committee, and advised that medical supplies sourced by the hospital through the CPSU be audited to ensure value for money. In respect of the Anatomy Centre, the PC advised that the MFH ought to obtain a copy of the lease agreement from Malta Enterprise to ensure that it would be able to ensure that the SHC honoured its commitments. Regarding the KGRH, the PC discussed the poor results obtained through the patient satisfaction survey and considered declaring a contractual breach; however, the Committee was advised that this might not be sufficient grounds to invoke such action.

4.3.143 Of note to the NAO was that, based on the records retained by the PC, it was at times evident that the Government's uncertainty of requirements adversely affected the finalisation of the designs of the hospitals. In later discussions by the Committee on the designs of the hospitals, it was noted that the SHC envisaged that it would be more efficient to carry out maintenance works at the SLH and to rebuild the KGRH.

4.3.144 A running theme noted by the NAO in the PC meetings held during Q1 2019 was concern regarding the SHC's financial situation. The Committee noted that the SHC's financial records for years ending 2017 and 2018 indicated that, although substantial settlements had been made, a significant amount of outstanding payables remained. The PC was informed that the total balance sheet liabilities as at 31 December 2018 amounted to approximately €18,500,000. While the Committee deemed the information provided by the SHC as insufficient to determine whether the Concessionaire was keeping up with costs, it noted that the operational costs of the hospitals and head office had increased in 2018 and that the liabilities relating to the Barts Medical School were not included. The PC agreed that the information provided was inadequate and exposed the Government to risk, which situation necessitated further clarification to be made by the SHC.

4.3.145 Another matter that drew the attention of the PC was that the SHC had not settled NI contributions and VAT payments for 2018, despite that the MFH had provided funds specifically for this reason. In an update provided during a subsequent meeting, the PC acknowledged that partial payment of the NI for 2018 had been effected; however, amounts remained in arrears for 2018 and years prior. While the SHC contended that this situation would be addressed once outstanding payments due by the Government and subject to dispute proceedings were settled, a legal advisor to the PC deemed the stance taken by the Concessionaire as unacceptable, arguing that disputed amounts did not provide valid grounds for not paying tax dues on time. In submissions made to the NAO in April 2022, the MFH informed this Office that the matter relating to the non-payment of NI and tax was referred to Court.

4.3.146 Another matter that drew the PC's attention in Q1 2019 related to Technoline Ltd, a company that had a contractual relationship with the VGH and later the SHC. The Committee's attention was drawn to a press statement issued by Mr Ivan Vassallo, the Managing Director of Technoline Ltd, who noted that there was no involvement by Government in Technoline Ltd and that the VGH had provided him with a shareholder loan. The PC stated that the Government was to ensure that the source of funds for this loan did not emanate from public funds allocated for the operations of the hospitals, for such a diversion would constitute an abuse of public funds. Referring to that stated by the Leader of the Opposition in connection with the Technoline Ltd issue in January 2019, the Committee confirmed its agreement with the recommendation by the Minister for Health to appoint an external auditor to review whether such a financial contravention had taken place. The remit of the audit that was to be undertaken was to be set by the PS MFH and the Chair PC. In submissions to the NAO, the MFH indicated that the audit of Technoline Ltd was not undertaken as the Ministry did not have the mandate to enquire on the accounts of a private company.

Quarter 2, 2019

4.3.147 The PC continued to meet fairly regularly in Q2 2019. Seven meetings, held on 5 April 2019, 30 April 2019, 10 May 2019, 17 May 2019, 24 May 2019, 14 June 2019 and 21 June 2019, were convened in this period. The Committee continued discussions on several aspects relating to the concession, foremost among which was its focus on possible revisions to contractual terms, including revisions to service deliverables and payments by the Government to the SHC. Guidance on this point was sought by the PC in terms of the revised financial model put forward by the Economic Consultant. As part of its broader role in advising Government on matters relating to negotiations with the SHC, the PC sought financial information from the Concessionaire to ensure visibility over allocated public funds, monitored progress regarding the achievement of milestones and managed the dispute that arose in connection with the LSA.

4.3.148 The PC reiterated its concern about Government's visibility over how funds paid to the SHC were being utilised, despite repeated requests submitted to the Concessionaire. The Committee was of the opinion that a political decision ought to be taken to issue the SHC with a deadline by when all pending financial, technical, medical and operational issues were to be resolved and eventually formalised into a contract. Noted was that should the SHC fail to comply within the stipulated deadline, this would lead to the suspension of payments by Government. The Committee agreed that should the desired objectives not be realised within the stipulated timeframe, then the Government was to have a contingency plan that could be immediately implemented to ensure continuity of service.

4.3.149 Of interest to the NAO was that the PC estimated that the cost to Government to operate the GGH and the KGRH in 2018 would have amounted to €55,000,000. However, the Government had paid the SHC €64,000,000, made up of a concession fee payment of €53,000,000, €4,000,000 in respect of the LSA, €2,000,000 for the OPU and €5,000,000 for pharmaceuticals. The PC estimated that the final contribution for operations to the SHC should have amounted to €61,000,000.

Notwithstanding this, the Committee acknowledged that the SHC incurred additional expenses in connection with the helicopter (€1,000,000) and insurance (€1,200,000), which would have resulted in a total cost of €63,200,000. Therefore, the PC considered the €64,000,000 payment to the SHC as reasonable.

4.3.150 A contentious item of expenditure revisited by the PC related to pharmaceuticals. While the PC noted that the HSDA stipulated that the annual fee included pharmaceuticals, the SHC maintained otherwise. To secure the continuation of operation, the Government agreed to pay, under protest, an additional €5,000,000 for pharmaceuticals. Nonetheless, the Government was aware that the €2,100,000 allocation for pharmaceuticals originally included in the HSDA was understated and that €5,100,000 would be required for pharmaceuticals during the transition period.

4.3.151 In terms of service deliverables at the GGH, the PC discussed the payment due by the Government for the 10 additional orthopaedic beds made available by the SHC. The Committee noted that the HSDA set a rate of €600 per bed per day, which would have resulted in an annual cost to Government of €2,100,000. However, the PC observed that the concession milestone relating to orthopaedics had not been achieved, for the operating theatre had not been built. Therefore, the Committee proposed a reduced rate to reflect the level of service, ultimately agreeing on a yearly fee payable by Government of €730,000 until the milestone was fully achieved. Furthermore, the Committee resolved that any joint surgery more than the agreed 100 surgeries per year would be paid at rates contracted by the MFH.

4.3.152 The PC discussed other GGH-related service deliverables. The Committee agreed that the number of long-term care psychiatric beds was to be set at 40, the obligation of the SHC to provide a hydrotherapy pool removed, and that a capping be set for minor surgeries; however, the PC acknowledged that any proposed changes to the concession agreements required political endorsement. Also noted in the minutes was that the SHC were threatening to halt works at the Barts Medical School should its claim for payment of €8,000,000 by Malta Enterprise not be met.

4.3.153 Service deliverables at the KGRH were also reviewed by the PC. The key issue discussed related to the classification of beds, whereby the SHC requested that the 450-bed complement be split into 200 long-term care and 250 rehabilitation beds, with the latter further sub-divided into 160 intensive rehabilitation and 90 semi-intensive rehabilitation beds. While the Committee considered the request by the SHC as reasonable, it identified the need to define intensive and semi-intensive rehabilitation possibly through reference to pre-established guidelines on length of stay, which guidelines were to be determined by external experts. Another issue relating to bed capacity at the KGRH was the completion of 27 additional beds, for which the Government agreed to pay a daily rate of €218 for each bed subject that, once the KGRH was fully operational, the cost of each of these beds would revert to the agreed price as stated in the HSDA. One final matter reviewed by the PC was that relating to the provision of Chinese medicine, whereby the Committee was informed that following consultation with the Minister for Health, it was confirmed that this service would not be required.

4.3.154 The report drawn up by the Economic Consultant in the months prior continued to serve as the basis for guiding Government in determining its negotiating position. In Q2 2019, the Economic Consultant revised the long-term financial plan by converting the fixed cost for long-term beds to a variable cost. The PC acknowledged that this change could give rise to a significant increase in costs and therefore insisted that the Government have access to live data, crucial for ensuring accountability. The revised plan was discussed with the SHC and feedback provided in this regard resulted in an estimated difference in costs of €7,000,000 resulting from the omission of certain services in the original estimation. Following the necessary revisions by the Economic Consultant, the PC noted that the income to be received by the SHC from the Government would amount to €80,000,000 a year. Before disclosing the revised financial proposal to the SHC, the Committee indicated that the PS MFH intended to refer the proposal to MFIN to ensure compliance with Eurostat's requirements. It is to be noted that in previous exchanges with the PC, the PS MFIN informed the Committee that the adjustment to the fixed and variable cost ratio might be insufficient for Eurostat to accept that the transaction is not placed on the Government's balance sheet and proposed that another long-term financial plan should be prepared as a back-up.

4.3.155 During Q2 2019, a notable development was registered with respect to the LSA dispute, for the audit firm engaged to quantify the claim by the SHC concluded its analysis and established that a reimbursement of €4,300,000 was to be effected by the Government in full and final settlement. From this amount, the Government was to deduct €468,644 previously paid in respect of transferred resources, resulting in a net payment of €3,831,356. The PC noted that this was over and above the quarterly payment of approximately €9,000,000 and was to cover such reimbursements until end 2020. This settlement was conditional on the SHC presenting its audited financial statements for 2016 and 2017, failure of which would be deemed a legal breach.

4.3.156 Of note to the NAO were the concerns expressed by the PC regarding various obligations of the SHC that remained unrealised. The PS MFH highlighted that the performance guarantee had not been provided and that the parent company guarantee submitted in lieu was not in the proper form. Another concern related to outstanding payments due by the SHC to the Commissioner for Revenue. While the SHC declared that a payment agreement covering VAT, NI contributions and other employee deductions had been entered into, no supporting evidence was provided. Several other issues raised related to the financial situation of the SHC, whereby the Committee referred to the non-submission of audited accounts, the requirement to increase share capital to cover negative equity and the need to address visibility issues concerning the Concessionaire's contribution towards funding of the project. Recorded in the minutes was an attempt by the MFH to seek a definite commitment by the SHC to attend to these matters; however, the Concessionaire declined entering into an agreement to this end. The PC resolved that the matter be brought to the attention of the Minister for Health to seek political direction regarding future payments should these obligations remain unaddressed.

Quarter 3, 2019

4.3.157 The frequency of meetings held by the PC in Q3 2019 decreased, with the Committee meeting on four occasions during this quarter. This was partly attributable to the decision taken by the Committee in that no meetings were to be held during August 2019. Meetings were held on 12 July 2019, 16 July 2019, 26 July 2019 and 6 September 2019.

4.3.158 Several financial issues relating to the concession were discussed by the PC in Q3 2019. A matter that continued to elicit the concern of the PC was the non-submission of financial statements by the SHC. The Committee noted that the SHC had been cautioned that, should the financial statements for 2016, 2017 and 2018 not be submitted, the Government would withhold half of the quarterly payment to the Concessionaire. The parties agreed that the balance of the quarterly payment would be settled by the Government once the 2018 draft accounts were provided by the SHC. The Committee was also informed that a payment of €360,000 was released by Government in connection with the LSA.

4.3.159 Noted by the PC was that the SHC financial statements for the years ending 2016 and 2017 were not audited and that, as at December 2017, the VGH had accrued total liabilities of €34,000,000, which amount was to be confirmed following the submission of the audited accounts. The Chair PC stated that the SHC's financial position would become clearer once the 2018 accounts were provided; however, the DG (Finance & Administration) MFH, a member of the Committee, indicated that he was informed that the SHC were refusing to assume the entire liabilities and were in discussions with the VGH on the matter.

4.3.160 Another financial issue raised by the PC related to the payments claimed by the SHC in connection with the OPU. The Committee asserted that during the transition period, the Concessionaire was bound to maintain at least the same level of service as was in operation on taking over the concession and that the OPU was part of the service offered at the SLH at the time. Nonetheless, the PC acknowledged that no budgetary provision for the OPU had been made in the HSDA. While the MFH contended that it was not legally obligated to pay additional funds for the OPU, it held a moral obligation to do so, heightened no less by the fact that the SHC had stopped providing this service at the time. This context led both parties to concur that relevant amendments be made to the concession framework to allow for the MFH to pay the SHC €1,450,000 annually for the OPU. Payment was to be effected on condition that the funds would be used solely for the provision of orthoses and prosthesis to patients. An element of disagreement arose in terms of the duration of this arrangement, with the Government stipulating end 2021, or earlier, as the cut-off, while the SHC resisted the setting of a deadline, contending that it was not possible to meet this deadline in view of the uncertainty that persisted with respect to the overall project timeframe. Although no further information on the outcome of this matter was provided in the PC minutes for Q3 2019, the NAO's attention was drawn to concerns raised by the Committee regarding the quality of service provided by the SHC in relation to the OPU, with delays in sourcing medical equipment and gaps in the regularity of patient reviews cited.

4.3.161 The PC revisited the additional fee that was to be charged by the SHC for the completed orthopaedic beds at the GGH. While the annual charge of €730,000 was reiterated, the Committee noted that only five of the ten beds that had been made available could be serviced due to a lack of staff. The Advisor MFH referred to the pharmaceutical and medical supplies payments that were to be made by the Government to the SHC, which amounted to €5,000,000. Notwithstanding that the Government had waived its right to claim these costs and that the concession agreements only referred to payment of pharmaceutical and medical supplies post the transition period, he asserted that the amounts paid ought to improve the cash flow difficulties faced by the SHC.

4.3.162 The DG (Finance & Administration) MFH informed the PC that all payments due to the SHC until mid-2019 had been released; however, he noted that since the extension of the transition period had not been formally recognised, inflation rates were not being taken into account when effecting payments. The PC stressed the need for the MFH to have visibility over the SHC's financial situation for the Ministry to ensure that funds paid by the Government were being used for the operational and clinical running of the hospitals. On the suggestion of the Chair PC, the Committee resolved that funds paid to the SHC would be conditional on these not being used to finance other unrelated costs. Another finance-related update provided to the PC concerned the LSA settlement, wherein the Committee was notified that the SHC maintained that it was entitled to further claims. In this context, the Chair PC established that the LSA and OPU payments were to be paid over and above the quarterly payment, after due verification.

4.3.163 The most important issue discussed by the PC during Q3 2019 related to the classification of the concession by Eurostat as on-balance sheet and the Government's efforts at shifting it off its balance sheet. Noted in the minutes of the PC meeting held on 16 July 2019 was that the PS MFH and the PS MFIN had reviewed the financial proposal that was to address the risks identified by Eurostat resulting in the aforementioned classification. A draft financial proposal was submitted to the SHC on the proviso that the Government's position was not immutable but subject to revision following Eurostat review. The proposed solutions to mitigate the risks identified by Eurostat were discussed by the PC.

4.3.164 The first risk considered by the PC and classified as high risk by Eurostat was that relating to the lenders' liability being paid by the Government on the termination of the contract. The concession agreements provided that Government was to assume the lenders' debt in full and extinguish such debt, even if due to a concessionaire event of default. Eurostat considered this a financing guarantee provided by the Government, which therefore resulted in the concession being recorded on-balance sheet. The Government's proposed solution to mitigate this risk was its refraining from providing guarantees on lenders' debt. Instead, the investment was to be financed through a company gearing structure involving 20 per cent equity and 80 per cent debt. Should the equity to debt ratio at any time fall below the 10 per cent to 90 per cent benchmark, the two parties would be obligated to effect a transfer of the ownership of the company to the Government for a value of €1.

4.3.165 The second element identified by Eurostat and also classified as high risk was that relating to the minimum revenue guaranteed to the concessionaire through the agreements entered into with the Government. The focus of Eurostat's concern in this respect centred on the fact that the demand related element ought to respect the principle of proportionality, including the extreme case in which the absence of demand would lead to no operational payments. This was not the case in the concession under review since the Government was bound to pay the service delivery fee even if the beds were not occupied. This demand related element made the payments by the Government to the Concessionaire a de facto minimum revenue guarantee, which element automatically led to the recording of the assets as an on-Government balance sheet entry. To mitigate this risk, the Government proposed a new payment methodology based on demand and benchmarked against MDH unit costs. The proposed compensation mechanism comprised payments based on capacity provided and payments related to activity undertaken, set at a 60:40 ratio. The allocation of payments to these two elements was established to optimise the incentive for efficient provision of medical services. Both elements were variable in that, activity payments were to be effected ex-post in relation to services actually provided, while capacity payments were to be effected ex-ante in relation to capacity booked by the Government for a prescribed future period. On the expiry of such a period, the extent of capacity booked by the Government could be revised. The proposed mechanism assumed a 15 per cent profit margin within the revenue stream and an internal rate of return of 9 per cent on an estimated capital investment of €220,000,000 to be made by the Concessionaire. Noted was that this change necessitated a system to monitor and control service delivery and payments, as well as changing demand requirements and service provision conditions. Furthermore, health tourism service provision was to be incorporated in the overall returns, with provisions to ensure an equitable distribution of profits compatible with procurement and state aid rules.

4.3.166 Another area deemed to be of high risk related to the force majeure provisions in the SCA. The main concern captured in this respect was that the force majeure events were not restrictively defined but left open-ended. To mitigate this risk, the Government was to request further information from Eurostat on how to dilute the risks relating to the open-ended list of force majeure events. The envisaged solution was the elimination of the open-ended element in the definition of force majeure events.

4.3.167 Fourth in the list of risks was that associated with the concession's financing and re-financing. In its classification of this risk as high, Eurostat noted that refinancing was to be approved by the Government with no limitation on the grounds or time for which the Government could withhold refinancing. To mitigate this risk, the Government was to seek the assistance of Eurostat on how it could refuse to consider refinancing claims from the Concessionaire. Nonetheless, the Government noted that this risk had been rendered redundant on account of the solution put forward with respect to the risk relating to the lenders' liability being paid by the Government on the termination of the contract.

4.3.168 The final two risks identified by Eurostat were classified as moderate and related to changes in law leading to automatic early termination and Government step-in. The risk concerning changes in law was to be partly mitigated through the proposals relating to lenders' liability being paid by the Government, with the removal of the €100,000,000 clause eliminating the incentive of the Concessionaire to call for an early termination. In respect of the risk concerning Government step-in, Eurostat's views on this matter were to be solicited; however, in terms of its proposed solution, step-in by the Government in events that did not arise from a default of the Concessionaire would result in compensation being paid by the Government to the Concessionaire equivalent to the fair value of the company at the time of the step-in, including elements of goodwill and loss of future profits.

4.3.169 In terms of its overall role in assisting the Government with the management of this concession, the PC discussed the setting up of the MMB. The Committee noted that this Board ought to have been convened at the commencement date; however, this had not been done and therefore advocated for corrective action. The necessity of the MMB assumed further relevance with the completion of the Barts Medical School, for its running necessitated the upkeep of the premises and the maintenance of equipment in use at the School. Following enquiries by the PC, the Committee established that an agreement had been entered into between the SHC and the QMUL, wherein it was resolved that responsibility for maintenance rested with the latter. Notwithstanding this, the PC highlighted the utility of the oversight that would be provided over such matters by the MMB.

4.3.170 Several other issues were addressed by the PC during Q3 2019. These included the level of service delivery at the GGH and the KGRH and an update on the timeline of works at the Barts Medical School, with handing over scheduled to take place on 26 October 2019, among other matters.

Quarter 4, 2019

4.3.171 During Q4 2019, the PC met with some regularity. In all, five meetings, convened on 11 October 2019, 18 October 2019, 29 October 2019, 15 November 2019 and 22 November 2019, were held. Several issues were brought to the attention of the Committee. The PC lamented that since the SCA only allowed for one site visit a year and the MFH had not been provided with access to real-time data, this hindered the Committee's ability to oversee the SHC's operations. An update regarding the SHC's masterplan for the sites was provided to the PC by the Chair PMB, a member of the Committee. The PC was informed that the SHC intended to engage one contractor to undertake works at the GGH and the KGRH/SLH sites and that the Concessionaire's budgeted investment in this respect was approximately €350,000,000. On a positive note, the PC was notified that the construction of the Barts Medical School was satisfactorily completed, and that commissioning was scheduled for mid to end October 2019.

4.3.172 The major point of discussion of meetings held by the PC in Q4 2019 related to updates emerging in terms of the negotiations of the terms of the concession agreements then underway between the Government and the SHC. During the meeting held on 11 October 2019, the PS MFH informed the PC that an MoU had been entered into by the Government and the SHC. The PC was provided with a summary of the salient points included in the MoU drawn up by the Advisor MFH. The four key points presented in this respect related to the transition period, the LSA, the OPU, and drugs and consumables.

4.3.173 The MoU entered into by the Government and the SHC specified that the transition period would be extended till the end of July 2023. The Government committed to increase the charges payable to the SHC by nine per cent annually, effective as from 1 January 2019. Under the LSA, the SHC claimed a shortfall of approximately €8,000,000 for the period 2016 to 2018. Based on the report drawn up by an audit firm, the Government agreed to pay €4,800,000 in settlement of this claim. The MoU further provided that the Government would compensate the SHC for all substantiated claims made for HR related to the remaining balance of €3,200,000. As regards the OPU, the annual allocation by MFIN of €1,450,000 was to be paid to the SHC following the submission of relevant documentation. This allocation was to be revised by nine per cent annually from the date of commencement of service. Finally, the MoU stipulated that the drugs and consumables utilised by the SHC – as procured from the CPSU and up to €5,000,000 – were to be free of charge during the transition period. The allocated budget for drugs and consumables was also subject to an annual nine per cent increase during the transition period. The Advisor MFH informed the PC of the overall financial impact of these revisions introduced through the MoU, estimating that payments by the Government to the SHC in 2019 were to increase by approximately €6,000,000 and by €12,300,000 in 2020.

4.3.174 The ensuing discussion of the PC highlighted several concerns that arose from the Government's entry to the MoU. The Chair PC noted that MFIN requested a more appropriate legal vehicle, over and above the MoU, to provide the additional funds sought with respect to the LSA. Furthermore, reference was made to the request by the PS MFIN for additional information on the audit process leading to the additional payment of €4,800,000, which information was required to guide Cabinet in its approval. Another matter revisited by the PC was the nine per cent increase payable to the SHC, which was a marked increase from the two per cent rate applicable prior to 2019. The Advisor MFH clarified that the 2016, 2017 and 2018 funding was not contested by the SHC and that the nine per cent increase would apply from 1 January 2019 until the end of the transition period. Based on the €73,000,000 payment made in 2018, applying a nine per cent annual increase would result in an annual amount due by the Government to the SHC of approximately €118,000,000 in 2023.

4.3.175 Aside from changes being made to the manner in which the transition period was to be regulated, the PC noted that discussions regarding the post-transition period were progressing at a steady pace and agreement was reached on a substantial number of items. Nevertheless, some pending issues remained, with the PC citing the investment required and operation of the MRI in the outpatients department and the cardiac catherization laboratory at the GGH, pathology and labour supply issues.

4.3.176 In a subsequent meeting of the PC, the issue of payments to be effected by the Government to the SHC in a post-transition scenario was discussed. While the PC was informed that the SHC had agreed to the services requested by the Government, it was noted that the cost of these services, post-transition, was to be based on unit costs for the same services at the MDH in 2016. However, unit costs for the period 2016 to 2019 would be increased by nine per cent each year to account for increases in pharmaceutical and labour costs, among others. In addition, the PC explored the mechanism that was to regulate revisions to payments post-transition. The Committee considered whether to apply a nine per cent rate as suggested by the SHC or an increase that mirrored that of the MDH. In the meeting held on 29 October 2019, the PC resolved that payment revisions during the post-transition period were to be based on the MDH costs; however, the applicable rates were to factor increases in payroll and operational costs. While this matter was addressed by the PC, a general sense of uncertainty prevailed following entry to the MoU. The PC expressed doubt as to what contractual framework was to regulate the concession, be it the MoU or the concession agreements.

4.3.177 Despite progress registered with respect to the post-transition period, the PC's concerns regarding the transition period persisted. These largely stemmed from the fact that the obligations of the SHC during the transition period were not specified in the concession agreements. This anomaly would be aggravated were the Government to consent to the annual nine per cent increase in amounts payable to the SHC. The PC contended that the concession agreements ought to have imposed obligations on the Concessionaire during the transition period, citing among other requirements the responsibility to provide training to staff and improvements in the standards of service, the installation of safety equipment, maintenance works, the replacement of equipment reaching its end of life and the reporting of serious incidents to the Government. Moreover, the Consultant MFH noted that the Government was to continue to have access to the information necessary to monitor key clinical performance indicators. While acknowledging that the SHC provided clinical performance reports, he highlighted that the concession agreements did not impose any obligation to this effect. It was in this context that the PC reiterated that the nine per cent annual increase during the transition period was to result in a corresponding obligation to provide a higher standard of service, which obligation was to be duly documented.

4.3.178 As to the way forward, the PC emphasised that negotiations with the SHC ought to be more formalised, structured and with the appropriate retention of records duly endorsed by the parties. Furthermore, the Chair PC suggested that the Office of the Attorney General be invited to attend negotiations between the Government and the SHC to provide advice. The Committee resolved to refer this proposal to the Minister for Health.

4.3.179 Of concern to the NAO was that stated by the PS MFH during the last meeting of the PC, held on 22 November 2019. The PS MFH asserted that the MFH ought to have been made aware that a legal document was to be presented to Cabinet by the Minister for Tourism. The PC agreed to wait for visibility of this document and for political direction from the Minister for Health on how to proceed with negotiations given that this process involved two ministries. In addition, the Chair PC recommended that the PS MFH and the PS MOT should meet to coordinate negotiations.

4.3.180 One final matter relating to the process of negotiations discussed by the PC during Q4 2019 concerned the long-term financing of the concession by the SHC. The PC was informed that the negotiations regarding financing were being concluded with the SHC and that discussions were being held in parallel with MFIN. Related to the securing of financing by the SHC was the Government's obligation to pay the Concessionaire €80,000,000 at the end of the concession period to take back the GGH and the KGRH. The Chair PC expressed reservations as to the legality of this payment; however, the Advisor MFH explained that the €80,000,000 payment by the Government was intended to compensate the SHC for the discrepancy between the capital investment that it ought to have made (€220,000,000) and the depreciation of the investment over the term of the concession (€127,000,000). This shortfall, equivalent to €80,000,000, would be payable by the Government to the SHC at the end of the 30-year concession term. The Chair PC noted that the concession agreements were unclear as to whether the €80,000,000 payment by the Government would be due should the concession be extended for a further period. To address this concern, the PC proposed that a clause ought to be included in the revised contractual framework calling for an evaluation of the sites at the end of the concession period, which valuation was not to exceed €80,000,000, but was to be waived in case of an extension to the concession term exceeding 25 years.

4.3.181 The NAO established that the PC did not convene after its meeting of 22 November 2019. The MFH informed the NAO that the PC was not reconvened after this date, which development coincided with a different approach to negotiations being adopted following the change in Prime Minister, whereby the OPM adopted a more central role in coordinating matters through the greater involvement of the MFH and MFIN.

Reconvening of the Health Management Committee

4.3.182 The reconvening of the HMC was discussed during a meeting of the Quality and Assurance Board (QAB) held on 1 December 2021, with the PS MFH identified as the Committee's Chair. The first meeting of the HMC was held on 7 January 2022. Although this development occurred outside of the audit period, for reasons of completeness the salient issues discussed are presented. During this meeting, the HMC outlined the SHC's obligations and agreed that a list of works to be carried out, as identified by the Concessionaire, was to be submitted to the MMB once convened. The NAO was informed that several other meetings of the HMC were held in 2022.

Oversight by the Maintenance Monitoring Board

4.3.183 The MFH informed the NAO that the MMB was not constituted during the period under review. The SCA stipulated that the MMB was to be set up as from the effective date, which date occurred on 1 June 2016. It is pertinent to note that this Board was tasked with determining an annual preventive maintenance plan to be carried out by the Concessionaire and ensuring that corrective action was taken whenever repairs were necessary at the sites. Notwithstanding the key role that was to be fulfilled by the MMB, the failure to constitute this Board, be it when the concession was under the control of the VGH, and later when under the control of the SHC, was deemed to be a shortcoming of note by the NAO. Although the SCA does not specify which party was to chair the MMB and therefore initiate proceedings for the convening of meetings, the same can be said with resect to the PMB, the HCC and the HMC, which committees held meetings during various phases of the concession.

4.3.184 Aside from the obligations associated with the general maintenance of the sites, another consequence of the failure to set up the MMB was that certain reporting requirements stipulated in the SCA to ensure an adequate level of service were overlooked. A case in point was the replacement of key medical equipment that was at its end of serviceable life, wherein the SHC bore an obligation to periodically report to the MMB its planned investments to address proposed replacements. Another lacuna created by the failure to set up the MMB related to the implementation of a technology watch. This function was to identify instances where technical advances and/or technology upgrades in connection with the sites and assets would be of benefit, with corresponding expenditure incurred borne by the SHC. The findings of the technology watch were to be periodically presented to the MMB; however, since this Board was never constituted, the envisaged benefit was not realised.

4.3.185 The views of the MFH were sought regarding how the Government was ensuring that the sites under the control of the SHC, from where health services were delivered, were being maintained to an adequate level. While the MFH conceded that the MMB had not been set up, the Ministry indicated that it requested the SHC to provide routine maintenance protocols. The MFH rightly contended that certain maintenance obligations came into effect once the corresponding concession milestone was achieved. This assertion was deemed reasonable by the NAO in that the obligation to maintain premises yet to be constructed only arises once the construction works are completed. Nonetheless, this Office is of the understanding that the handover of the sites constituted a concession milestone in and of itself and ought to have triggered a shift in responsibility for maintenance of the existent facilities from the MFH to the Concessionaire. The NAO affirms that the delivery of a healthcare service of adequate standard rests on several aspects, one of which is that the premises and facilities utilised for the provision of such services are properly maintained. In this case, the NAO was not provided with assurance that the Government had the necessary visibility over the maintenance and upkeep of the sites. Responsibility for this shortcoming is mainly attributable to the Government, for the SCA provides a mechanism for oversight that has not been exercised since June 2016.

4.4 Masterplans and planning permits

Consideration of the masterplan drawn up by Steward Health Care

4.4.1 To establish an understanding of progress registered by the SHC in terms of the planned works at the sites, the NAO reviewed the planning applications submitted to the PA. In addition, this Office considered the masterplans put forward by the SHC to the PMB.

Development plans as submitted on 26 March 2019

4.4.2 The first masterplan submitted to the PMB following the reconvening of the Board was dated 26 March 2019. The masterplan provided details of the development that was to be undertaken at the GGH, the KGRH and the SLH. Included in the masterplan was the strategic context of the development, a planning and delivery roadmap, a list of individuals to be included in the healthcare teams, a list of priorities to be addressed, a healthcare regeneration plan, details relating to the functional content, land use and opportunities available, together with a facilities condition assessment.

4.4.3 The masterplan set the strategic context of the development, which was intended to increase patient access, create integrated health campuses, enhance patient and workplace experiences, achieve operational efficiencies and improve quality and safety.

4.4.4 The planning and delivery roadmap detailed a schedule of tasks to be implemented during the different phases of the project, that is, strategic planning, design, construction and transition and occupancy. Also included were the members who were to form part of the SHC teams in Malta and Gozo, the clinical planning teams for each site and key partners.

4.4.5 The masterplan presented the guiding principles that comprised the priorities and key themes that were to be addressed, namely, to:

a. address clinical needs;

b. implement strategies to address infrastructure and transport challenges;

c. optimise real estate utilisation and create a sense of place;

d. improve health and safety; and

e. ensure sustainability and wellness.

4.4.6 The plan for healthcare regeneration for the GGH, the KGRH and the SLH was intended to:

a. create integrated campuses for health;

b. improve access for all;

c. define a topography of public spaces and gardens and outline the role of buildings within the structure;

d. enhance experience for patients, their families and staff;

e. drive operational efficiencies;

f. provide flexibility within the structure established by the masterplan, thereby allowing the SHC to adapt to changes in direction, need, emphasis and technology;

g. exploit the pre-existing building stock and the buildings under construction;

h. improve quality and health and safety; and

i. preserve resources and set out a legacy for the future of healthcare in Malta and Gozo.

4.4.7 The section of the masterplan relating to functional content provided details of the bed distribution plans for the sites, stipulating current and planned capacities (Figure 12 and Figure 13 refer).

Figure 12 | KGRH/SLH bed distribution - Current and planned capacity

KGRH/SLH bed distribution	Current capacity	Planned capacity
KGRH – Geriatric	211	200
KGRH- Rehabilitation (low intensity)	64	90
SLH- Rehabilitation (high intensity)	-	160
SLH- Dermatology	-	12
KGRH/SLH bed total	**275**	**462**
Medical tourism/Acute care	-	-
Holistic medical centre	-	outpatient

Figure 13 | GGH bed distribution - Current and planned capacity

GGH bed distribution	Current capacity	Planned capacity
Acute care somatic	99	135
- Intensive Care Unit	7	20
- Obstetrics and gynaecology	10	10
- Nursery	10	6
- Paediatrics and child psychiatry	10	10
- Orthopaedics	-	19
- Surgical and medical	62	70
Adult psychiatric short stay	12	15
GGH acute care bed total	**111**	**150**
Geriatric/Long-term care	121	160
Long-stay psychiatry	41	40
Rehabilitation	-	25
Medical tourism	-	50
GGH other beds total	**162**	**275**
GGH beds total	**273**	**425**
Acute same day places (incl. dialysis)	**20**	**25**
Operating rooms	2	5-6
Endoscopy suites	1	incl.
Catheterisation lab		1
MRI		1
Hyperbaric oxygen therapy	1	multi-chamber

Development plans as revised on 20 September 2019

4.4.8 An update to the masterplan was presented to the PMB on 20 September 2019, which included an executive summary, a revised planning and delivery roadmap and development considerations for the Malta and Gozo sites.

4.4.9 Noted in the executive summary were the key headlines pertaining to the healthcare regeneration programme in Malta and Gozo. The headlines comprised that the Barts Medical School handover was on schedule; the masterplan was complete; that support was secured from the PA; the acknowledgement of positive capital market interest; and that the development team was in place. According to the planning and delivery roadmap, the project had progressed to the design phase.

4.4.10 The development considerations listed key functional considerations and a list of existing site observations and objectives for the GGH. The key functional considerations set were to:

a. expand patient bed provisions from 273 to 425 to enhance care in Gozo, of which 200 beds were to be refurbished and 225 new beds to be provided. This included plans to refurbish a total area of 14,590 square metres, to construct new buildings with a total area of 31,555 square metres and to demolish a total area of 6,230 square metres;[12]

b. enhance the site to support the Barts Medical school;

c. enhance provision of acute services;

d. establish the GGH as a disaster centre; and

e. integrate a helipad to enhance emergency transfer capabilities.

4.4.11 As regards the existing site observations that warranted address, noted was that:

a. clinical services and the physical sites were fragmented;

b. facilities were to be integrated with the Barts Medical School;

c. positive existing features and buildings were to be acknowledged;

d. the buildings were to be sited at a distance from the escarpment and ridge; and

e. key cultural sightlines were to be respected.

12 The NAO noted several instances of inconsistency in terms of the number of beds to be provided at both sites.

4.4.12 In this context, the planning objectives for the GGH were to:

a. create a unified entrance;

b. integrate new and existing facilities;

c. extend the courtyard concept;

d. simplify phasing and decanting to reduce patient and staff disruption;

e. construct the new facility in a single phase; and

f. create legible site zones to organise the premises.

4.4.13 The elements of development listed for the SLH included a list of key functional considerations, zoning and site cohesion issues, as well as details relating to the proposed construction masterplan.

4.4.14 The key functional considerations included plans to:

a. expand patient bed provision from 300 to 425 beds;

b. enhance facilities for rehabilitation care; and

c. integrate services into an efficient healthcare campus.

4.4.15 The zoning and site cohesion issues indicated plans to create legible zoning between clinical and affiliated healthcare use, enhance permeability, urban integration and access into the site, embrace the buffer zone and scheduled structures for re-use in development plans, and revise vehicular circulation to ease congestion.

4.4.16 The proposed masterplan for the SLH indicated the intention to refurbish an area of 21,300 square metres and to construct an area of 5,520 square metres from a total area of 82,829 square metres. Although not quantified, parts of the site, including the KGRH, were to be demolished. The masterplan included a development schedule of works that indicated that construction of the SLH was to commence in Q4 2020 and conclude by Q4 2022, with a planned opening during Q2 2023. Phase one construction for the new acute hospital at the GGH was to commence in Q4 2020 and conclude by end 2023, with a planned opening during Q1 2024. Phase two of the project, comprising the refurbishment of the GGH, was planned for commencement in Q4 2023 and completion by Q4 2024, with a planned opening in Q2 2025.

Development plans as revised on 17 October 2019

4.4.17 On 17 October 2019, a development masterplan was submitted by the SHC to the PMB with respect to the SLH and the KGRH. This masterplan included details of the planning principles and the development program, which included information relating to the existing site conditions, the demolition plan, the development control plan, circulation and parking, the dimensional plan and a development schedule.

4.4.18 The planning principles for the KGRH/SLH site were to:

a. expand patient bed provision from 300 to 462 beds;

b. enhance facilities for rehabilitation; and

c. integrate services into an efficient healthcare campus.

4.4.19 The plan regarding the KGRH/SLH site was to create legible zoning between clinical and affiliated healthcare use, enhance permeability, urban integration and access into the site, embrace buffer zones and scheduled structures for re-use in the development plan and improve vehicular circulation to ease congestion and render more legible.

4.4.20 The masterplan described the existing site conditions, stating that the KGRH had significant code compliance issues and that the outpatients building had considerable health and safety issues. Demolition plans were included in the masterplan and indicated that several sites, with an area of 54,914 square metres, were to be demolished, namely the:

a. SLH physiotherapy annex;

b. kitchen;

c. boiler;

d. x-ray building;

e. KGRH;

f. medical and nursing school;

g. Child Development and Assessment Unit;

h. outpatients building;

i. doctors' residence;

j. Hyperbaric Unit;

k. Psychiatric Unit;

l. Zammit/engineering annex; and

m. other miscellaneous facilities.

4.4.21 The demolished buildings were to be replaced by the new rehabilitation hospital, a multi-storey car park at lower ground and other construction the use of which was not specified. Noted in the development control plan submitted with respect to the KGRH/SLH site was that the SLH, including the chapel, the Psychiatric Unit, the mortuary, the building occupied by Malta Enterprise and the guard house were not earmarked for demolition.

4.4.22 A plan for a revised vehicular circulation on the site was proposed. Indicated in this respect was that there would be 710 car park spaces, of which 150 spaces would be included in the new multi-storey car park, 330 spaces would be accommodated in the existing Pieta car park and 230 car park spaces would be incorporated within the onsite parking.

4.4.23 According to the development schedule, the design phase would extend to Q2 2020. During this period, the pre-application engagement and planning applications were to be submitted. Construction was to commence in Q3 2020 and to conclude by Q3 2022. The SLH was to open by end 2022.

Development plans as revised on 20 November 2019

4.4.24 On 20 November 2019, an update was provided to the PMB. Included in the update was a development summary and schedule, a revised bed development plan for the KGRH, site rendering plans and details relating to the SLH physiotherapy department.

4.4.25 The GGH development program included site plans that indicated the planned demolition, which mainly included the removal of underperforming clinical buildings and mortuary to allow for new road alignment, the removal of the major part of the psychiatric hospital, the entire Paediatric Occupational Therapy Unit and administration building, and a minor section of the main GGH building. The plans also indicated the buildings marked for refurbishment, which included the GGH main hospital building and the Santa Theresa building. Also indicated were the areas planned for development, that is, the multi-storey car park of 420 car spaces, the new acute hospital and the Anatomy Centre.

4.4.26 Also indicated in the GGH development plan was that the previous massing strategy options were reviewed, which resulted in a significant set back from the Southeast escarpment/ridge, the need for stepped massing to reduce perceptual mass, limiting the buildings to three floors including plant and helipad, and an articulated building form to reduce scale.

4.4.27 The development plan for the SLH included details pertaining to the phase one refurbishment works to be undertaken on the SLH main building, the SLH physiotherapy annex, the Psychiatric Unit and the mortuary. The planned phase one demolition sites were to include the outpatients building, which was to be replaced with a new multi-storey car park at lower ground level and clinical services at the overground levels; the doctors' residence, including the Hyperbaric Unit and the OPU; site-wide road realignments; and a new rehabilitation centre, which required close proximity to the SLH to ensure minimal transfer time for inpatients and staff. Furthermore, the facilities section, the x-ray building, kitchen, boiler and the Zammit/engineering annex were to be demolished as these areas were required to accommodate enhanced site traffic flows. Additional sites to be demolished after phase one comprised the medical and nursing school, the Child Development and Assessment Unit and the KGRH; however, no details were included to indicate the reason for the demolition of these additional buildings or the planned use of the areas once reconstructed, save for the indication that these were for 'future alternative use'.

4.4.28 Outlined in the masterplan were details relating to the refurbishment of wards and the intended expansion of new beds at the KGRH that was to be undertaken in the interim. Indicated in the plan was that the works were to commence on 25 November 2019, with an additional 27 new inpatient beds scheduled to be in service by 20 January 2020. The works were divided into three phases. The works planned for phase one comprised the transfer of the offices, phase two entailed the move of clinical users, while phase three involved the conversion of the existing Medical Outpatients Unit and Physiotherapy Unit.

4.4.29 Included in the masterplan was an updated development schedule of works that indicated that construction of the SLH was to commence in Q3 2020 and conclude by Q2 2022. Construction of the new acute hospital at the GGH was also to commence in Q3 2020 and conclude by Q3 2022, accelerating the expected completion date by a year when compared to the previous development schedule submitted. Furthermore, construction at the GGH was to commence in Q2 2023 and be completed by end 2024.

Feedback on the proposed development plans received on 26 November 2019

4.4.30 On 26 November 2019, feedback was provided by the SCH on the proposed rehabilitation, restoration and part redevelopment of the KGRH and the SLH as cited in the SHC masterplan. This feedback was the result of several pre-submission meetings, inspections and demonstration of plans by the SHC's project consultants to the SCH held between June and November 2019.

4.4.31 The SCH recommended that the mortuary be retained, restored and re-utilised. The outpatients building, which the SHC planned to demolish, was to be retained, restored and rehabilitated. However, if the redevelopment of this block was inevitable, the SHC was to provide justification for its redevelopment as well as drawings and photomontages of the proposed block. Moreover, the façades were to be incorporated in the new design.

4.4.32 The SCH consented to the redevelopment of the doctors' quarters and accepted that the psychiatric ward be retained, restored and rehabilitated. Regarding the boiler house and chimney, while the demolition of the 1990s chimney and accretions was deemed acceptable, the SCH recommended that the original boiler house, equipment and the underground oil reservoir be retained owing to their architectural, contextual and industrial heritage value. The same principle applied to the kitchen and laundry, where the demolition of additions could be considered, yet the original laundry and kitchen were to be retained owing to their architectural and contextual relation as part of the original complex. The demolition of the KGRH was acceptable since the building had no architectural or contextual value, although the SCH suggested that the name of the building be retained owing to its historical association as a memorial. The interventions to the main building of the SLH were generally agreed to subject to an update to the restoration method statement together with a phasing plan for monitoring by the SCH, a works method statement for the demolition of the accretions and installation of the lifts and drawing and photomontages of the external lifts. A works method statement was also required, including geological tests and studies for any ground disturbance and rock cutting.

4.4.33 Furthermore, the SCH recommended that the façade of the Blood Bank, which was proposed for demolition and redevelopment, be retained, restored and integrated within the project not only as it had architectural value but also as it formed a significant part of a streetscape that contained rows of scheduled buildings and was within an Urban Conservation Area.

Development plans as revised on 11 December 2019

4.4.34 Another report, titled PMB Clinical Review, was presented with respect to the GGH on 11 December 2019. The report included a masterplan development summary, a functional content summary, a clinical adjacency review and key departmental diagrams, including those of the emergency department, diagnostic imaging, theatres, inpatient new wards and refurbished wards.

4.4.35 The existing site comprised the GGH, the psychiatric hospital, the Barts Medical School, the Anatomy Centre, the mortuary, the Paediatric Occupational Therapy Unit and the administration building. Proposed in this submission was the demolition of the Anatomy Centre and the mortuary, with the latter necessary to allow for road alignment. Also recommended was the demolition of a minor section of the GGH and a substantial part of the psychiatric hospital. The key objective of these changes was to create a unified entrance, integrate the new and the old parts of the site and to extend the courtyard concept. The proposed plans demonstrated which buildings were to be refurbished and those that were to be newly constructed to house the Anatomy Centre and the multi-storey car park, which buildings were to be sited adjacent to the Barts Medical School. An acute hospital was also to be constructed adjacent to the GGH. The latter, the St. Theresa building, the Paediatric Occupational Therapy Unit and the administration building were to be refurbished.

4.4.36 The proposed vehicular circulation was intended to separate ambulance traffic, integrate public entrances, maintain service routes and develop the helipad to enhance the transfer service as well as embrace future road alignment to improve access to the Barts Medical School. Regarding parking at the GGH, indicated was that there would be 521 parking spaces in total, of which 420 car park spaces were to be available at the multi-storey car park and another 101 were to be on grade parking.

4.4.37 A functional content summary relating to the GGH was also included in the PMB Clinical Review. Indicated in this summary were the number of beds for inpatients, a description of diagnostics and treatments available, including a list of imaging modalities, emergency areas, the Hyperbaric Unit and operating theatres. Also included was information relating to ambulatory services, outpatients, allied health, phlebotomy and day care. Details of facilities intended for use by patients, visitors and staff, such as the public café, chapel and childcare centre; the clinical support to be provided, including pharmacy, laboratory services and mortuary; and non-clinical support were also provided in the Review.

4.4.38 Counts of inpatient beds were provided, wherein it was indicated that a total of 431 beds would be available. Of these, the refurbished GGH would have 206 beds, while the new building would provide for another 225 beds. The new inpatient building was to include 89 acute care inpatient beds, 16 obstetrics and nursery, 25 rehabilitation, 50 medical tourism, 10 paediatric acute care, 15 psychiatric short stay and 20 critical care beds. The refurbished GGH inpatient ward was to include 40 psychiatric long stay, 160 geriatric and 6 palliative care beds.

4.4.39 Designs were provided in the masterplan for the layout and logistics of each floor of the GGH.

Further submissions by the Superintendence of Cultural Heritage on 21 April 2020

4.4.40 A letter dated 21 April 2020 was sent by the SCH to the PA regarding the outline application PA/01535/20. The application was for the rehabilitation and upgrading of the SLH for medical healthcare and ancillary facilities. The drawings provided indicated that the works would include the demolition of the outpatients building, doctors' quarters, Hyperbaric Unit, boiler house, kitchen, x-ray room, Intensive Treatment Unit, physiotherapy and part of the engineering building, as well as the KGRH. The application also proposed the excavation of an underground parking, the rehabilitation of the existing SLH main building and chapel, the construction of an underground car park and rehabilitation centre, external landscaping, the rerouting of roads and the construction of surface car parking, as well as new multi-storey buildings instead of the KGRH.

4.4.41 Again, feedback was provided from a cultural heritage point of view by the SCH. Noted was that the SCH had engaged with this proposed development at a pre-submission stage, inspected the property and expressed reservations on the extensive demolition as proposed. The SCH strongly urged that the architectural and historical value of the various parts of the complex be recognised and that significant buildings be preserved and integrated into the development. In particular, the SCH noted with concern the proposal to demolish the outpatients building, the boiler house and the kitchen. These structures, while not scheduled by the PA, had a degree of architectural and historical value that would warrant a more appropriate treatment.

4.4.42 In its feedback, the SCH suggested that the mortuary be retained, restored and re-utilised. Since the application was proposing a refurbishment of this building, the SCH maintained that the permit ought to be subject to the submission of a method statement in the full development application. With reference to the outpatients building, the SHC's proposal was to demolish, excavate underground parking and redevelop a new block. The retention, restoration and rehabilitation of this block was recommended by the SCH from a heritage point of view. However, if redevelopment of this block was inevitable, then justification for redevelopment was being requested by the SCH, as were drawings and photomontages of the proposed block. Moreover, the SCH proposed the retention of the façades in the new design. The redevelopment of the doctors' quarters could be considered from a heritage point of view. Photomontages were required in this respect.

4.4.43 The SHC proposed that the boiler house and chimney be demolished to make way for traffic circulation. While the demolition of the chimney and accretions was deemed acceptable by the SCH, it recommended the retention of the original boiler house, equipment and the underground oil reservoir owing to their architectural, contextual and industrial heritage value. The SCH also recommended that the original kitchen and the laundry be retained, only allowing for the demolition of the later additions made thereto.

4.4.44 The demolition of the KGRH was deemed acceptable by the SCH as the building had no architectural or contextual value. Nevertheless, the SCH again recommended retaining the building's name owing to its historical association as a memorial. Once again, drawings and photomontages were requested in respect of the KGRH. Regarding the original SLH building, the SCH deemed the interventions proposed by the SHC as acceptable in principle, subject to the submission and approval of drawings and photomontages of the external lifts, a works method statement, including any geological tests and studies required for ground disturbance and rock cutting. The SCH retained the right to issue terms of reference for such studies and to request archaeological evaluation and/or monitoring. This was subject to the submission of method statements in the full development application.

4.4.45 In conclusion, the SCH noted the absence of necessary information and documentation and requested photographs of internal spaces, photomontages, restoration method statements and works method statements.

Development plans as revised on 30 December 2020

4.4.46 Another report, titled Masterplan Functional Content, was presented by the SHC on 30 December 2020. This report presented a summary of the SLH's functional content and provided a breakdown of the inpatient, allied health and diagnostic and treatment sections within the SLH. The inpatient section comprised a total of 450 beds, categorised into 200 geriatric and 250 rehabilitation beds. The allied health section comprised 96 rooms, which included physiotherapy, hydrotherapy, occupational therapy, shared rooms, clinics, orthotics and prosthetics, speech/language/hearing and psychology/social work/dietetics. The diagnostic and treatment section cited the x-ray, dexa, MRI, CT and ultrasound machines as imaging modalities.

4.4.47 The report also provided details on patient, visitor and staff support, clinical support and non-clinical support at the SLH. The patient, visitor and staff support included a public café, chapel, childcare centre, doctors' residences, staff canteen, staff administration centre and clinical offices. The clinical support included a pharmacy, laboratory services and mortuary, while the non-clinical support included logistics, food services, workshops and biomedical engineering.

4.4.48 This information was also provided for the GGH, with emphasis placed on inpatient services, diagnostics and treatment and ambulatory services. Regarding inpatient services, a total of 431 beds were to be made available, of which 206 were total acute care and 225 long stay or rehabilitation beds. The diagnostic and treatment section included details relating to imaging modalities, emergency, helipad, hyperbaric and operating theatres. The ambulatory section listed 30 outpatient rooms, 45 allied health rooms, phlebotomy and 28 areas for day care.

4.4.49 The report provided further details on the patient, visitor and staff support, clinical support and non-clinical support facilities that were to be available at the GGH. Patient, visitor and staff support facilities included a public café, chapel, childcare centre, doctors' residences, staff canteen, staff administration centre and clinical offices. Clinical support included the pharmacy, laboratory services and a mortuary, while non-clinical support comprised logistics, food services, workshops and biomedical engineering.

Consideration of planning applications submitted

4.4.50 In addition to the review of the minutes of the meetings of the PMB and the consideration of developments relating to the masterplan, the NAO referred to information publicly available at the PA. This Office ascertained that, prior to the change in control of the concession in February 2018, four applications for planning permits had been submitted by the VGH. Three of these applications were approved by the time the SHC assumed responsibility for the concession and were reported on in Part 2 of this audit published in December 2021. These comprised PA/05493/16, which related to the construction of a medical school at the GGH; PA/09895/17, submitted in connection with the demolition of part of the GGH and for the building of stores; and PA/03134/16, which entailed the restoration of the elevation of the main building within the SLH. Details corresponding to the remaining planning application submitted by VGH Management Ltd and the new applications submitted by the SHC ensue.

4.4.51 Having reviewed the planning applications submitted, the NAO noted that the SHC was proposing new plans for the hospitals that differed considerably from those previously agreed to between the VGH and the Government. In this context, this Office sought to understand the reasons for these changes and whether the proposed designs were endorsed by the Government. The President SHC Malta indicated that the SHC sourced the advice of real estate and facilities experts who, with the input of hospital teams and other stakeholders, considered the needs of the hospitals, patient-flows and other aspects of function, and drew up revised plans. Regarding the changes between the VGH's original plans and those as revised by the SHC, the President SHC Malta stated that she had no visibility over the original plans and therefore was unaware of material differences.

4.4.52 In submissions to the NAO, the MFH emphasised that the endorsement of the Ministry for the plans was not sought and therefore not provided. The MFH maintained that the SHC did not formally submit the proposed plans for sign off by the Government.

Planning Application 07491/16

4.4.53 On 14 November 2016, VGH Management Ltd submitted for screening the drawings of a masterplan for the refurbishment of the GGH to obtain feedback from the PA prior to the eventual submission of a planning application. The masterplan included major alterations, demolition and the reconstruction of parts of the GGH to increase the number of beds from 270 to 450. Prior to the SHC assuming control of the concession, ERA had reviewed the Project Description Statement referred to it in this respect and concluded that an Environment Planning Statement was required in accordance with the Environmental Impact Assessment Regulations.

4.4.54 Revised plans were submitted by the SHC to the PA on 19 February 2020. Noted in these plans was that the proposed site for the Anatomy Centre was shifted adjacent to the Barts Medical School, while the childcare centre originally proposed by the VGH was eliminated. The SHC proposed the demolition of the building housing the Emergency Department, which was to be replaced by a new acute hospital to be erected on the site. In line with the proposal submitted by the VGH, the general hospital building and the St Theresa building were to be refurbished. Furthermore, a new surface carpark was to be developed next to Barts Medical School, comprising four floors and a capacity of 420 spaces.

4.4.55 In view of these changes, a revised Project Description Statement was submitted to ERA on 20 February 2020, with the Authority issuing its comments in reaction thereto on 25 March 2020. ERA noted that various changes had been made to the plans, including the reconfiguration of the new proposed hospital building massing, which was reduced from four to three storeys, and the recession of the development by 50 metres away from the plateau's edge. More detailed information on the envisaged traffic generation and the geological characteristics of the site were submitted by the SHC. It was in this context that ERA reassessed the proposal. From the screening undertaken, ERA concluded that due to the construction of the new proposed buildings, that is, the 225-bed hospital building and the multi-storey car park, the proposal could still potentially affect the visual amenity of the site, albeit to a lesser extent than previously envisaged, in view of its prominent location on top of a hill. Therefore, the submission of photomontages was deemed necessary. An Air Quality study was also requested in view of the increase in traffic flows the development could generate. Nevertheless, ERA indicated that the environmental impact of the revised proposal was unlikely to be significant to the point of warranting an EIA.

4.4.56 No further submissions were made thereafter, with the application's status set as at 'screening process' at the time of reporting.

Planning Application 01535/20

4.4.57 On 20 December 2019, an outline development application for the masterplan for the rehabilitation and upgrading of the SLH for medical healthcare and ancillary facilities was submitted by Steward Malta Assets Ltd. From an analysis of the plans submitted, the NAO established that it was the intention of the SHC to demolish the KGRH in its entirety, all ancillary buildings connected to or related to the SLH main building and the other buildings facing the SLH, which buildings previously housed the outpatients building, the doctors' residence and the Hyperbaric Unit. According to the initial plans submitted, new buildings were to replace those demolished. Instead of the doctors' residence and the Hyperbaric Unit, a new rehabilitation centre was to be constructed. On the other hand, no specific use was identified for the buildings meant to replace the KGRH and the outpatients building. The only information in connection with the intended use of these buildings was 'future alternative use'. In addition, proposed in the application was the excavation and construction of an underground car park, the rehabilitation of the existing SLH main building and ancillary chapel, external landscaping, the rerouting of roads and the construction of a surface car park.

4.4.58 The NAO sought to obtain further information from the SHC regarding its intended plans for the KGRH. The SHC confirmed that the KGRH was to be decommissioned in line with the SLH/KGRH Outline Development Application bearing reference PA/01535/20 submitted to the PA on 20 December 2019. The rationale behind the SHC's decision to decommission the KGRH was that the building was deemed not fit for purpose and that it was practically cheaper to rebuild than to fix.

4.4.59 That stated by the SHC triggered two further lines of enquiry. First, relating to the relocation of services currently provided at the KGRH, and second, the intended use of the rebuilt KGRH site. The President SHC Malta informed the NAO that most of the services offered at the KGRH were to be transferred to the regenerated SLH. The SHC intended to construct a building adjacent to the SLH to complement the existing facilities and provide supplementary beds and services. Regarding the intended use of the buildings that were to be constructed on the KGRH site, the President SHC Malta was unable to provide any information on the matter. In later submissions made to the NAO, the SHC confirmed that the outline development application identified the current site of the KGRH as one intended for 'future alternative use'. The SHC argued that the SLH/KGRH gross floor area was approximately 95,000 square metres and this extent of development was consistent with that cited in the outline development application. The SHC retained the right to, if necessary, develop further components of the SLH/KGRH site within this footprint without the need to resubmit an outline development application.

4.4.60 The shifting of services from the KGRH to the SLH prompted further queries by the NAO in relation to the originally envisaged use of the SLH for medical tourism, and whether the transfer of services from the KGRH resulted in a displacement of the medical tourism function. The President SHC Malta indicated that her understanding was that there were discussions with the Government for the temporary shelving of this element of the concession.

4.4.61 Following the submission of these plans, consultation with stakeholders commenced. By May 2020, submissions from the Water Services Corporation (WSC), ERA, the Design Advisory Committee, Enemalta, the Commission for the Rights of Persons with Disability (CRPD), the SCH and Transport Malta were received by the PA. All stakeholders requested further information from the SHC. The WSC directed the SHC to the relevant regulations and provided contacts from within the Corporation who were to assist with further information regarding water provision and the drainage system of the site. ERA referred to the Project Description Statement submitted to it in February 2020 and noted that, based on the screening undertaken, the Authority had concluded that the impact of the development was unlikely to be significant in accordance with the Environmental Impact Assessment Regulations, 2017 (S.L. 549.46). However, further studies on the Air Quality and Noise Study were deemed necessary in view of the proposed increase in vehicle traffic during operations.

4.4.62 In its submission, the Design Advisory Committee requested artist's impressions from two identified points to assess the visual impact the proposal was to have from these viewpoints. Enemalta, requested the provision of an electrical load breakdown to be compiled by an electrical engineer or electrician, while the CRPD issued a non-objection in relation to the concept but requested detailed design proposals of the individual buildings to be referred to it for clearance. Moreover, Transport Malta requested the proposal to be referred to the PA's Transport Planning Unit for the possible requirement of a traffic study.

4.4.63 Major concerns were raised by the SCH. The SCH was averse to the extent of the demolition proposed. The Superintendence noted that although the outpatient's building, the boiler house and the kitchen were not scheduled by the PA, these buildings had a degree of architectural and historical value that warranted more appropriate treatment. The Superintendence noted that its recommendations were already communicated to the SHC in November 2019, which comment was understood by the NAO as implying that the recommendations made thereon were not taken into consideration by the SHC. According to the SCH, the mortuary was to be retained, restored and re-utilised and the method statement for restoration submitted to it. The same recommendation was made in respect of the outpatient's building, which was to be demolished and rebuilt over a new underground parking facility. However, the SCH noted that if full retention was not possible, then justification for redevelopment was to be provided, with the possibility of at least the retention of the façade. Drawings and photomontages were also to be submitted. Similarly, re-development was also accepted for the doctors' quarters, subject to the submission of drawings and photomontages of the proposed development. With respect to the boiler house and chimney, although the SCH was not contrary to the demolition of the chimney, it recommended that the original boiler house, equipment and the underground oil reservoir be retained owing to their architectural, contextual and industrial heritage value. A similar recommendation was put forward with respect to the original laundry and kitchen. No concerns were raised for the demolition of the KGRH; however, the SCH requested the name of the building to be retained owing to its historical association as a memorial. Drawings and photomontages were requested for the new building to ensure that the monumentality of the SLH's ward buildings, in terms of height and massing, were not jeopardised. No objections were raised with respect to the interventions that were to be made on the SLH's main building. Only drawings, photomontages and works methods statement were requested in this respect.

4.4.64 No further information or other consultation replies were submitted, and the application was noted as withdrawn by the applicant as at September 2022.

Planning Application 01635/20

4.4.65 On 19 February 2020, a full development application was submitted by Steward Malta Assets Ltd for the upgrading of the SLH. The application was for the demolition of the outpatients building, the doctors' quarters, the Hyperbaric Unit, the boiler house, the kitchen, the x-ray room, the Intensive Treatment Unit, the physiotherapy building and part of the engineering building. Excavations were also being proposed for the construction of an underground parking facility. Also proposed was the rehabilitation of the existing SLH main building and the ancillary chapel, the construction of a rehabilitation centre and a surface car park, external landscaping and the re-routing of internal roads.

4.4.66 This full development application was in line with the proposals set out in the outline development application bearing reference PA/01535/20, discussed in the preceding paragraphs. However, it did not include any provisions for the KGRH, for this site was excluded in this application. Under PA/01535/20, the KGRH was to be demolished and three separate buildings were to be constructed, yet their use was left unidentified.

4.4.67 The consultation process with stakeholders was initiated following the submission of the plans and elevations of each building. By 2 April 2020, Transport Malta, the Directorate for Quality and Standards in Education, the SCH and ERA had submitted their feedback. Similar to what was stated under PA/01525/20, Transport Malta requested that the proposal be referred to the PA's Transport Planning Unit for a possible traffic study. ERA requested the submission of an Air Quality and Noise Study, a comprehensive list of any machinery and/or equipment that was to be dismantled on site, and a works method statement. ERA also requested a consolidated waste management plan, plans and sections of all liquid fuel storage tanks, information on the combustion plants, proposed pools and water treatment equipment, and suggested consultation with the Radiation Protection Board. The Directorate for Quality and Standards in Education raised concerns regarding the absence of an outdoor area, understood by the NAO as reference to the childcare facility originally planned on the site.

4.4.68 In its submission of feedback, the SCH reiterated concerns previously expressed in reaction to PA/01536/20 regarding the proposed development. The SCH rejected the demolition of the mortuary and the kitchen/laundry. The SCH also rejected the demolition of the outpatients building unless strictly necessary, in which case at least the façade was to be retained. Furthermore, while the SCH objected to the demolition of the boiler house, it consented to the removal of the chimney. Although the application made no reference to the development of the KGRH, nevertheless, the SCH provided its comments in relation to the proposed demolition, which it accepted in line with that stated in PA/01536/20. The SCH noted that although the building formerly used as a Blood Bank was included in the proposal, no drawings were submitted. Nonetheless, the SCH recommended that the front façades be retained and restored, and integrated within the project and that any design of the rear façade replicate or evoke the existing arched veranda. The SCH noted that no drawings were submitted for the gatehouses even though these where within the site plan of the application. Nevertheless, the SCH recommended their retention, restoration and rehabilitation. In conclusion, the SCH requested methods statements, drawings and photomontages for all those buildings that were to be rehabilitated. The SCH also requested a works methods statement, including geological tests and studies for any ground disturbance and rock cutting. The Superintendence also required amended drawings for all the sites, a photo-survey of the interior spaces, photomontages of the proposed project as seen from vantage points outside the complex, and a compilation of historical information on the hospital complex annotating the various phases of the complex.

4.4.69 No further feedback in response to the consultation sought was submitted, while progress on the applications appeared to have stalled as no further uploads were made. At the time of reporting, the application status was set as ‘withdrawn by applicant’.

4.5 Concession milestones

4.5.1 The concession milestones represented the core deliverables of the concession awarded by the Government to the VGH in terms of the capital investment sought. These milestones consisted of the realisation of the handover plan (to be achieved by 29 March 2016), the submission of the design plans (30 August 2016), the supply of 50 additional beds for the KGRH (1 January 2017), the completion of the Barts Medical School (1 July 2017), the supply of 80 rehabilitation beds for the SLH (30 September 2017), the finalisation of the new build at the GGH (31 May 2018), the renovation of the GGH (30 September 2018), and the provision of the SLH medical tourism beds (31 December 2018) (Figure 14 refers). These dates were contingent on the issuance of the required licences by specific dates. 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 the certificate of final completion issued.

Figure 14 | Concession milestones

Concession milestone	Schedule
Handover plan	29 March 2016 (120 days from the commencement date)
Design plans	30 August 2016 (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

4.5.2 The provisions of the SCA regulating the deadline until when the concession milestones were to be achieved by the VGH were revised through the Addendum to the SCA dated 30 June 2017. Although the SCA stipulated specific dates for the concession milestones, these were contingent on the issuance of the relative licences and permits required by the Concessionaire to fulfil its obligations. The Addendum allowed for a lengthier period for the completion of the construction works, which were to be undertaken within four and a half years from the issuance of the planning permit. This was the contractual framework taken over by the SHC in February 2018.

4.5.3 Prior to the change of control of the concession, the only concession milestone achieved by the VGH was that relating to the handover plan. Although this ought to have been achieved by 29 March 2016, the NAO established that the handover plan was submitted to the Government in June 2016.

4.5.4 The NAO sought to understand the reasons why the VGH failed to achieve the milestones that were to be realised while the concession was under its control. The Director VGH challenged the understanding that its failure to secure funding resulted in its lack of achievement of the concession's objectives. He reiterated that, had his efforts to secure financing not have been disrupted by third parties and had he not been coerced to transfer the concession, funding would likely have been secured. Of note to the NAO were assertions made by the Director VGH, who maintained that the VGH was never in default of the concession agreements and was never given any verbal or written notice of non-performance or breach by the Government. The Director VGH argued that, like any new venture, especially one that required significant investment, it was not expected that the VGH would register a profit in the first few years.

4.5.5 The next concession milestone that was to be achieved – now by the SHC – was the submission of the design plans to the Government. The design plans were referred to the PMB by the SHC and were extensively discussed by this Board in meetings held between March 2019 and November 2019. This process of consultation culminated in a meeting with the Minister for Health on 20 September 2019, wherein the SHC gave a presentation of its plans for the sites in the presence of the PMB. It was in the context of this meeting that the PMB resolved that the plans would be endorsed by the Board once the designs were agreed to by the MFH. Further exchanges between the SHC and the PMB were noted in the subsequent meetings of the Board. During the PMB meeting of 20 November 2019 – the last meeting held by the Board in the period under review – the SHC provided the Board with an updated presentation of the masterplan and a project timeline capturing the envisaged completion dates of all the concession milestones.

4.5.6 In information provided to the NAO regarding the status of the design plans submitted by the SHC to the Government, the President SHC Malta indicated that no formal feedback was received following the presentation of the plans to the PMB and the ensuing discussion by the Board in its meetings of October and November 2019.

4.5.7 Notwithstanding the cessation of meetings by the PMB and the fact that no formal feedback was received from the Government, the SHC submitted planning applications in connection with the works to be undertaken at the sites. An outline development application relating to the rehabilitation and upgrading of the SLH and the demolition and construction of the KGRH was submitted on 20 December 2019. This was followed by a full development application submitted by the SHC on 19 February 2020. On the other hand, the planning application in relation to the various works that were to be carried out at the GGH site was also submitted by the SHC to the PA on 19 February 2020. According to the PA's records, as at June 2022, the SLH/KGRH outline development application and the full development application were withdrawn on request of the SHC. The planning application relating to the GGH works was set as at 'screening process' at June 2022.

4.5.8 That stated by the President SHC Malta contrasted with the perspective provided by the MFH. Although the MFH conceded that designs were submitted by the SHC in 2019, the Ministry contended that these were solely conceptual designs, which designs were not endorsed by the MFH. At a later stage, the SHC submitted more detailed plans, capturing the design of the development at a scale of 1:200. The MFH informed the NAO that the Ministry had reviewed these plans and provided the SHC with feedback, highlighting among others the fact that the plans were not according to British standards, as had been agreed. The SHC indicated to the MFH that Australian standards were utilised in drafting the plans. No other submissions were made by the SHC following the feedback provided by the MFH, with the Ministry cognisant of the financial outlay required to implement that planned and the challenges relating to the sourcing of finance that persisted.

4.5.9 Notionally, the approval by Government of the design plans and the authorisation by the PA of the relevant applications submitted by the SHC ought to have allowed for the commencement of works on the other concession milestones. Although these processes stalled and consequently prohibited any progress being registered with respect to the other concession milestones, this was not the case for the Barts Medical School. Evident in correspondence reviewed by the NAO was that the Government was prioritising the realisation of this concession milestone above all else, with this matter a point of discussion between the Government and the SHC prior to the latter taking over control of the concession. The urgency to complete this element of the concession stemmed from the Government's commitment to the QMUL and resulted in the acceleration of works by the SHC, leading to the completion of the Barts Medical School by October 2019.

4.5.10 The NAO established that none of the other concession milestones were achieved. The MFH confirmed that the obligations of the SHC to provide 80 rehabilitation beds at the SLH, complete the new build at the GGH, renovate the other areas of the GGH and complete the medical tourism beds at the SLH were not met. However, the MFH acknowledged that pockets of progress in terms of the upgrading of the sites were registered. The MFH noted the provision of 28 additional beds at the KGRH in March 2020; however, contended that these were not in fulfilment of the 50 additional bed obligation for the KGRH, as the SHC had merely converted an administration area within the hospital rather than set up a new ward. In addition, the MFH acknowledged that the Physiotherapy Department at the SLH was upgraded. Also recognised by the Ministry was the completion of the Anatomy Centre at the GGH, which facility was certified in September 2019. Aside from these pockets of progress, the GGH, the KGRH and the SLH remain in a generally dire state, with the investment envisaged for the upgrading, refurbishment or upkeep of the hospitals not made.

4.5.11 The NAO sought the views of the SHC as to why none of the concession milestones that were pending at the point of takeover, except for the construction of the Barts Medical School, were achieved. This Office enquired whether this was attributable to the SHC's inability to secure financing. The General Counsel SHC International informed the NAO that the SHC was reluctant to disclose information or views on this matter, given the possible impact of such disclosures on Government calling a default in the concession. Nevertheless, the General Counsel SHC International argued that the inability to secure financing was related to the contractual framework, which the SHC legitimately expected would be restructured. This expectation stemmed from the SHC's understanding that the baseline numbers were unrealistic and therefore the concession was not viable. The General Counsel SHC International maintained that this was not an SHC 'problem', but rather the combination of an unsuitable concessionaire, that is, the VGH, and a grossly mismanaged concession award.

4.6 Insurance cover

4.6.1 The SCA stipulated that the concessionaire was to provide insurance cover at its own expense. These included additional insurances as could be required by applicable law and as the concessionaire could reasonably consider necessary or prudent in accordance with good industry practice. During the VGH's control of the concession, the required insurance cover was obtained and renewed by the VGH in accordance with the SCA. Based on documentation provided by the MFH, the NAO noted that, following the change of control of the concession, the SHC continued to renew the insurance policies as required during the period under review.

4.6.2 The main elements of the concession that required insurance cover corresponded to the commercial aspect, encompassing medical professional, public and product liability, medical malpractice, employer liability, personal accident and industrial all risk. The NAO established that certain policy types were revised when renewed, note of which is outlined in Figure 15.

Figure 15 | SHC insurance coverage, 2018-2021

Policy type	Period of cover	Sum insured/ limit of liability	Insured parties
Commercial Combined (previously listed under 'Medical Professional Liability, Public Liability and products Liability)	15.07.18 - 30.06.19	€5,000,000	VGH Ltd and/or VGH Assets Ltd and/or VGH Management Ltd and/or their associated and/or affiliated and/or subsidiary companies each for their respective rights and interests. SHC International LLC and SHC Malta Ltd were added as additional insured parties only in respect of work performed by VGH Ltd and solely in respect of claims which could be brought against them arising out of or in connection with the business of the insured.
Commercial Combined	01.07.19 - 30.06.20 01.07.20 - 30.06.21	€5,000,000	VGH Ltd and/or VGH Assets Ltd and/or VGH Management Ltd and/or VGH Resources Ltd and/or Steward Malta Ltd and/or Steward Malta Management Ltd and/or Steward Malta Assets Ltd and/or Steward Malta Personnel Ltd and/or associated and/or affiliated and/or subsidiary companies, each for their respective rights and interests.
Medical Malpractice (previously listed under Commercial Combined)	22.04.21- 30.06.21 01.07.21- 30.09.21 01.10.21- 30.09.22	[unstated]	Steward Malta Management Ltd
Employers Liability	01.07.18 - 14.07.18 15.07.18 - 30.06.19	€2,000,000	VGH Ltd and/or VGH Assets Ltd and/or VGH Management Ltd and/or SHC Malta Ltd and/or SHC International LLC and/or their respective affiliated and/or subsidiary companies, each for their respective rights and interests.
Employers Liability	01.07.19 - 30.06.20	€2,000,000	VGH Ltd and/or SHC International Ltd and/or Steward Malta Management Ltd and/or VGH Management Ltd and/or Steward Malta Assets Ltd and/or VGH Assets Ltd and/or Steward Malta Personnel Ltd and/or VGH Resources Ltd and/or any subsidiary and/or associated and/or affiliated company, each for their respective rights and interests.

Policy type	Period of cover	Sum insured/ limit of liability	Insured parties
Employers Liability	01.07.20 - 30.06.21	€2,000,000	SHC International Ltd and/or Steward Malta Assets Ltd and/or Steward Malta Ltd and/or Steward Malta Management Ltd and/or Steward Malta Personnel Ltd and/or SHC International Holdings Ltd and/or any subsidiary and/or associated and/or affiliated company, each for their respective rights and interests.
Employers Liability	01.07.21- 30.09.21 01.10.21- 30.09.22	€25,000,000	SHC International Ltd and/or Steward Malta Assets Ltd and/or Steward Malta Ltd and/or Steward Malta Management Ltd and/or Steward Malta Personnel Ltd and/or SHC International Holdings Ltd et al.
Personal Accident – Group(previously listed under 'Business Select Accidental Damage Bronze policy')	24.07.18 - 23.07.19	€100,000	VGH Ltd and/or SHC Malta and/or SHC International LLC
Personal Accident – Group(previously listed under 'Business Select Accidental Damage Bronze policy')	24.07.19 - 23.07.20	€100,000	VGH Ltd and/or SHC International and/or Steward Malta Management Ltd and/or VGH Management and/or Steward Malta Assets Ltd and/or VGH Assets Ltd and/or Steward Malta Personnel Ltd and/or VGH Resources Ltd and/or any subsidiary and/or affiliated company, each for their respective rights and interests.
Personal Accident – Group (previously listed under 'Business Select Accidental Damage Bronze policy')	24.07.20 - 23.07.21 24.10.21 - 23.10.22	€100,000	SHC International Ltd and/or Steward Malta Assets Ltd and/or Steward Malta Ltd and/or Steward Malta Management Ltd and/or Steward Mata Personnel Ltd and/or SHC International Holdings Ltd.
Industrial All Risk	15.07.18 - 30.06.19	€315,180,000	VGH Ltd and/or VGH Assets Ltd and/or VGH Management Ltd and/or SHC Malta Ltd and/or SHC International LLC.

Policy type	Period of cover	Sum insured/ limit of liability	Insured parties
Industrial All Risk	01.07.1 9- 30.06.20	€253,045,000	SHC International Ltd and/or Steward Malta Ltd and/or Steward Malta Management Ltd and/or Steward Malta Assets Ltd and/or Steward Malta Personnel Ltd and/or the Government of Malta and/or VGH Ltd and/or VGH Management Ltd and/or VGH Assets Ltd and/or VGH Resources Ltd, for their respective rights and interests as defined in the General Global Corporate and Commercial All Risks policy.
Industrial All Risk	01.07.20 - 30.06.21	€253,930,000	SHC International Ltd and/or Steward Malta Asset Ltd and/or Steward MaltaLtd and/or Steward Malta Management Ltd and/or Steward Malta Personnel Ltd and/or SHC International Holdings Ltd and/or the Government of Malta and/or their associated companies and/or affiliated and/or subsidiary companies, each for their respective rights and interests as defined in the General Global Corporate and Commercial All Risks policy.
Accidental Damage (Property) (previously listed under Industrial All Risk)	01.07.21- 30.09.21 01.10.21- 31.10.21	€193,930,000	SHC International Ltd and/or Steward Malta Assets Ltd and/or Steward Malta Ltd and/or Steward Malta Management Ltd and/or Steward Malta Personnel Ltd and/or SHC International Holdings Ltd and/or the Government of Malta and/or their associated companies and/or affiliated and/or subsidiary companies, each for their respective rights and interests as defined in the General Global Corporate and Commercial All Risks policy.

Policy type	Period of cover	Sum insured/ limit of liability	Insured parties
Accidental Damage (Property) (previously listed under Industrial All Risk)	01.11.21- 31.10.22	€253,930,000	SHC International Ltd and/or Steward Malta Assets Ltd and/or Steward Malta Ltd and/or Steward Malta Management Ltd and/or Steward Malta Personnel Ltd and/or SHC International Holdings Ltd and/or the Government of Malta and/or their associated companies and/or affiliated and/or subsidiary companies, each for their respective rights and interests as defined in the AXA XL PDBI policy.
Public Liability	11.01.18 - 11.01.19	€1,500,000	VGH Ltd and/or VGH Assets Ltd and/ or VGH Management Ltd and/or subsidiary companies and/or associated companies, each for their respective rights and interests.
Public Liability	11.01.19- 11.01.20 02.05.19- 11.01.20	€1,500,000	VGH Ltd and/or VGH Assets Ltd and/or VGH Management Ltd and/or SHC Malta and/or SHC International LLC and/ or subsidiary companies and/or associated companies, each for their respective rights and interests.
Public Liability	12.01.20 - 11.01.21	€1,500,000	Steward Malta Ltd and/or VGH Ltd and/ or SHC International Ltd and/or Steward Malta Management Ltd and/or VGH Management Ltd and/or Steward Malta Assets Ltd and/or VGH Assets Ltd and/ or Steward Malta Personnel Ltd and/or VGH Resources Ltd and/or any subsidiary and/or associated and/or affiliated company, each for their respective rights and interests.
Public Liability	11.01.21 - 11.01.22	€1,500,000	SHC International Ltd and/or Steward Malta Assets Ltd and/or Steward Malta Ltd and/or Steward Malta Management Ltd and/or Steward Malta Personnel Ltd and/or SHC International Holdings Ltd and/or their associated companies and/ or affiliated companies and/or subsidiary companies, each for their respective rights and interests.

4.6.3 The NAO could not trace invoices corresponding to three policies, namely, 'Contract Works Third Party Liability and Delay in Start-up', 'Terrorism and/or Sabotage' and 'Master Terrorism Facility'. However, as the policy documents were not made available, this Office was unable to ascertain whether cover for these risks was provided through other policies.

4.7 Concession fee

4.7.1 The SCA stipulated that a concession fee of €3,000,000 was to be paid by the Concessionaire in equal instalments over ten years, with the first payment to be made after the effective date. While the concession was under the control of the VGH, €550,000 of the amount due was paid, leaving a balance of €2,450,000. The €550,000 payment covered the period from 1 June 2016 to 31 March 2018.

4.7.2 Following the change of control of the concession, the SHC continued to effect regular payments in respect of the concession fee. Based on records made available by the MFH, the NAO confirmed that, as from Q2 2018, quarterly payments of €75,000 were made. As at Q2 2022, the SHC paid a total of €1,275,000. The MFH confirmed that the amounts payable by the SHC in terms of the concession fee were offset against payments due by the Government in relation to the concession. Comprehensively, €1,825,000 of the €3,000,000 due to the Government were paid by the Concessionaires.

4.8 Financing agreements

4.8.1 The SCA stipulated several conditions precedent that, when satisfied, were to trigger the effective date. The effective date occurred on 1 June 2016; however, certain conditions were not satisfied by this date. Instead, the Government provided the Concessionaire with waivers, thereby allowing the SCA to come into effect. One of the conditions waived related to the Concessionaire's obligation to provide the Government with evidence that the primary lenders and financing agreements consented to by the Government were in place. During the period when the concession was under the control of the VGH, this condition was not satisfied but several waivers were granted by the Government. This situation persisted until control of the concession was assumed by the SHC. The final waiver provided to the VGH was dated 29 December 2017. Through this waiver, the Government allowed the VGH until 5 March 2018, or one month post the expiry of the conditional share sale and purchase agreement with the SHC, to submit evidence that the financing agreements were in place.

4.8.2 Following the change of control of the concession that occurred on 15 February 2018 and the expiry of the waiver granted by the Government to the VGH until 5 March 2018, no additional waiver in terms of the financing agreements was provided to the SHC until October 2018. In a memorandum to Cabinet submitted by the Minister for Health on 15 October 2018, reference was made to the obligation of the SHC to submit evidence of the financing agreements as part of the conditions precedent in the SCA. Through this memorandum, the Minister for Health sought the approval of Cabinet for the Government to grant a waiver to this obligation until 31

December 2018, which request was approved by Cabinet. This essentially meant that between 5 March 2018 and 15 October 2018, the obligation of the SHC to provide evidence of its financing arrangements was neither met by the Concessionaire nor waived by the Government.

4.8.3 Notwithstanding this, other developments relating to the financing of the concession occurred between March 2018 and December 2018. On 8 May 2018, the First Sanction Letter was entered into whereby the BOV granted Steward Malta Management Ltd an overdraft facility of €5,000,000 to finance its working capital requirements in connection with the operation of the sites. This was shortly followed by entry into the Direct Agreement between the Government, Steward Malta Management Ltd, Steward Malta Assets Ltd, Steward Malta Ltd and the BOV on 22 June 2018. Through this Agreement the parties acknowledged and confirmed that the Bank was to be considered as falling within the definition of 'lenders', that the obligations of Steward Malta Management Ltd as borrower were to be considered to fall within the definition of 'lenders' debt', and that the First Sanction Letter was to fall within the definition of 'financing agreements' in terms of the SCA. Subsequently, on 19 September 2018, a Second Facility Agreement was signed, whereby the BOV granted a loan facility of €3,000,000 in favour of Steward Malta Management Ltd.

4.8.4 Further developments were registered in November 2018 for, on 13 November 2018, the first Amendment and Restatement Agreement (Direct Agreement) was entered into by the Government, the SHC, and the BOV. Through this Agreement, the overdraft facility of €5,000,000 and the loan facility of €3,000,000 made available by the Bank to the Concessionaire, were to be recognised as part of the lenders' debt as regulated by the SCA. This implied that the Government would assume responsibility for this debt in the event of any default. Also on 13 November 2018, Steward Malta Management Ltd, the BOV and the Government entered into the first Amendment and Restatement Agreement (Security by Title Transfer). Annexed to this was the First Amended and Restated Security by Title Transfer Agreement, through which the Security by Title Transfer Agreement was amended and restated to, among others, secure the performance of the obligations of Steward Malta Management Ltd under the Second Facility Agreement.

4.8.5 Based on the review of documentation provided by the Cabinet Office, the NAO established that, between 1 January 2019 and 20 January 2020, no waiver was provided by the Government to the SHC in relation to its obligation to submit evidence that the primary lenders and financing agreements were in place, despite that during this period of more than a year the SHC failed to submit the required evidence.

4.8.6 Nevertheless, during this period, certain developments connected to the financing of the concession ensued. On 17 July 2019, the Third Facility Agreement was entered into, whereby the BOV granted a term loan facility of €22,250,000 in favour of Steward Malta Assets Ltd, and a term loan facility of €5,900,000 in favour of Steward Malta Management Ltd. On the same day, the Government, the SHC and the BOV entered into another Amendment and Restatement Agreement (Direct Agreement) to recognise the €28,150,000 in financing made available by the latter to the Concessionaire as part of the lenders' debt in terms of the SCA. The implication of this recognition was that the Government would assume responsibility to honour the repayment of the facility made available in case of default. Further noted was that the loan facility dated 19 September 2018 granted to Steward Malta Management Ltd for the amount of €3,000,000 was to be refinanced and repaid in full by Steward Malta Management Ltd using the funds available to it under the Third Facility Agreement. Also on 17 July 2019, Steward Malta Management Ltd, the BOV and the Government, entered into the second Amendment and Restatement Agreement (Security by Title Transfer). Annexed to this was the Second Amended and Restated Security by Title Transfer Agreement, through which the First Amended and Restated Security by Title Transfer Agreement was amended and restated to, among others, secure the performance of the obligations of Steward Malta Management Ltd under the Third Facility Agreement.

4.8.7 A development of note was the memorandum to Cabinet submitted by the Minister for Tourism on 26 August 2019. The Minister for Tourism requested the authorisation of Cabinet to enter into a direct agreement with the BOV and the SHC in respect of facilities made available by the Bank to the Concessionaire of €5,000,000, €3,000,000 and €27,900,000. Through the proposed agreement, court-declared nullity of the transaction documents would be tantamount to a non-rectifiable government event of default and that the Government would therefore be liable to pay the lenders' debt. The implication of this broadening of what was to constitute a government non-rectifiable event of default was that, in the case of court-declared nullity of the concession agreement, the Government would be liable to pay the Concessionaire €100,000,000 and the sum of the lenders' debt incurred. On 27 August 2019, Cabinet approved entry into the direct agreement. According to the minutes of the Cabinet meeting held, the Minister for Tourism had indicated that the recommended course of action was pursuant to lengthy meetings with MFIN, the BOV and other unspecified stakeholders. Action in this regard promptly followed, with the third Amendment and Restatement Agreement (Direct Agreement) entered into between the Government, and Steward Malta Management Ltd, Steward Malta Assets Ltd, Steward Malta Ltd and the BOV on 27 August 2019. Annexed to this Agreement was the Third Amended and Restated Direct Agreement, through which the definition of non-rectifiable government events of default was broadened.

4.8.8 The gap resulting from the SHC's failure to provide evidence of financing secured or the Government's omission to waive this requirement across 2019 and early 2020 came to an end on 21 January 2020. According to the minutes of a Cabinet meeting held on 21 January 2020, the Minister for Health referred to the need to grant the SHC a waiver with respect to its obligation to submit the required financing agreements. The proposed waiver was to extend to the end of February 2020. Following discussions, Cabinet endorsed that proposed. The matter was again raised in Cabinet on 25 February 2020, during which meeting the implications of granting or not granting other waivers to the SHC were discussed. After lengthy discussions, Cabinet decided that the SHC was not to be granted another waiver. Cabinet acknowledged that the way forward for this concession for the time being was that the parties were to honour the agreements originally entered into and follow developments. This situation persisted until end December 2021, that is, the period under review by the NAO.

4.8.9 During the entire period reviewed, the SHC failed to provide the Government with evidence that the primary lenders and financing agreements were in place. This situation was at times regularised by the Government through the waivers granted to the SHC; however, these waivers were intermittent in their coverage, resulting in lengthy periods wherein the obligations set in the SCA were neither met nor waived. The NAO sought to understand what remedial action was contemplated in the SCA in instances where conditions precedent were not satisfied. Although the SCA stipulated that the conditions precedent, including that relating to financing, were to be satisfied by not later than May 2016, the Agreement allowed for the waiver of the fulfilment of these obligations. In the NAO's understanding, the SCA regulated what was to happen if the conditions precedent were not met before the realisation of the effective date. However, the SCA was silent as to how the parties were to proceed in instances when the effective date was realised but the conditions precedent were not met. This latter situation manifested once the Government discontinued the granting of waivers to the SHC in respect of the requirement to provide evidence of its financing agreements. The NAO is of the opinion that the uncertainty that arises out of this lacuna curtails the options available to Government to address this indeterminate state.

4.9 Parent company guarantee

4.9.1 Stipulated in the SCA was that the Concessionaire was to obtain and provide a parent company guarantee in the form set out in the Agreement. This requirement was to be met by the effective date of the SCA, that is, by 1 June 2016, and was to remain valid for 90 days following the lapse of the concession period or early termination thereof. In essence, the parent company guarantee was intended to provide the Government with an element of assurance in that it guaranteed the performance of the Concessionaire's obligations under the SCA and indemnified the Government if the Concessionaire failed to perform as agreed.

4.9.2 The NAO established that while the concession was under the control of the VGH, a parent company guarantee was provided by Bluestone Special Situation 4 Ltd on behalf of the VGH. This parent company guarantee was dated 19 May 2016, was in accordance with the form and structure specified in the SCA and was capped at €3,000,000.

4.9.3 Following the change of control of the concession, the NAO enquired whether the SHC provided a parent company guarantee in accordance with the requirements of the SCA. In reply, the MFH provided correspondence submitted by SHC International to the Minister for Tourism dated 15 February 2018. In essence, SHC International confirmed that it would be able to finance its own obligations and those of the Concessionaire companies under the concession agreements through the Steward Group's resources and relationships. Cited in this correspondence was that Steward was part of a group whose annual revenue was approximately $8,000,000,000. Through the endorsement of other correspondence also submitted by the SHC to the Minister for Tourism on 15 February 2018, the Government inter alia confirmed that the SHC had satisfied the Concessionaire's obligation to finance the concession under the concession agreements.

4.9.4 The issue of the parent company guarantee was brought to the attention of Cabinet through a memorandum submitted by the Minister for Health on 15 October 2018. Noted in the memorandum was that the Government had been informed that the SHC had not duly rolled over the performance guarantee put in place by the VGH in accordance with the SCA and instead had provided a parent company guarantee. Consequently, Cabinet was being requested to temporarily waive the obligation borne by the SHC to provide a performance guarantee until 31 December 2018 and accept the parent company guarantee, which request was approved by Cabinet.

4.9.5 Notwithstanding the endorsement by the Minister for Tourism of the letter submitted by SHC International on 15 February 2018 and that of Cabinet on 16 October 2018, the NAO has reservations regarding whether the cited correspondence qualified as a parent company guarantee. These reservations stem from the fact that the letter submitted by SHC International was not in accordance with the format specified in the SCA. While the commitment by SHC International rested solely on its reference to the resources at its disposal through the Steward Group, the requirements established in the SCA were far more onerous. The concerns of the NAO were mirrored in another memorandum submitted to Cabinet by the Minister for Tourism on 27 September 2019. Cited in the memorandum was that the Government and the SHC had drawn up and executed an MoU which specified certain fundamental commercial principles on which agreement had been reached. One of the aspects addressed in the MoU was the parent company guarantee, wherein it was indicated that the Government required the submission of such a guarantee by the SHC as stipulated in the SCA by 1 January 2020.

4.9.6 In later submissions to the NAO, the MFH asserted that the parent company guarantee as submitted by SHC International was not appropriate, since the company had a limited issued share capital of €1,200. The MFH contended that what was expected was a parent company guarantee from the US holding company, that is, SHC System LLC; however, this guarantee was never provided by the SHC. The Ministry maintained that for the parent company guarantee to be deemed valid, sufficient documentation supporting that claimed and a firm commitment that the parent company was willing to honour the guarantee were required.

4.9.7 It is pertinent to note that despite the SHC having taken over control of the concession in February 2018, the Concessionaire failed to provide the Government with the requisite parent company guarantee from the point of assuming control. This failure to comply with the provisions of the SCA persisted until, at least, the end of the period under review.

4.10 Performance guarantee

4.10.1 The Concessionaire was to provide to the Government an unconditional and irrevocable on demand prime bank performance guarantee in security for the due, proper and punctual performance of all its obligations under the SCA. The performance guarantee of €9,000,000 was to be at the Concessionaire's sole expense. The guarantee was to be kept in force until at least 90 days subsequent to the completion date. This date was not achieved during the period under review, therefore the obligation on the Concessionaire to provide the performance guarantee persisted.

4.10.2 The VGH 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. This guarantee covered the period when the concession was under the control of the VGH and the initial few months when under the control of the SHC given that the latter assumed control in February 2018.

4.10.3 Following the expiry of the performance guarantee procured by the VGH, on 5 June 2018, the Minister for Tourism requested Cabinet to authorise a change in the conditions regulating when the performance guarantee could be called by the Government. The change sought by the SHC was such that, the performance guarantee would only be called in the event of operational breaches and not for failure to achieve concession milestones. This exemption was to apply between 1 June 2018 and 31 December 2018. Cabinet approved the request put forward by the Minister for Tourism. It must be noted that this exemption did not constitute a waiver of the obligation of the SHC to submit a performance guarantee. Therefore, between 1 June 2018 and 15 October 2018, the SHC failed to provide the required performance guarantee and no waiver releasing the SHC from this obligation was provided by the Government.

4.10.4 On 15 October 2018, the Minister for Health submitted a memorandum to Cabinet wherein it was noted that the SHC had not duly rolled over the performance guarantee put in place by the VGH in accordance with the SCA. The SHC had instead provided the Government with a parent company guarantee. Consequently, Cabinet was being requested to temporarily waive the obligation borne by the SHC to provide a performance guarantee until 31 December 2018 and accept the parent company guarantee in lieu. During the meeting of 16 October 2018, Cabinet approved that proposed by the Minister for Health.

4.10.5 With the expiry of the waiver granted by Cabinet until end 2018, on 1 January 2019, the SHC bore an obligation to submit a performance guarantee in line with the provisions of the SCA. However, between 1 January 2019 and 5 August 2019, the SHC did not provide the Government with the required performance guarantee. Furthermore, this failure to comply with the SCA was not covered by an exemption provided by Cabinet in the form of a waiver.

4.10.6 It was only on 31 July 2019 that the Minister for Tourism brought the matter again to the attention of Cabinet, seeking approval for the continued temporary waiver of the SHC's obligation relative to the performance guarantee. On 6 August 2019, Cabinet endorsed that proposed by the Minister for Tourism and granted a waiver to the SHC until 31 December 2019. This waiver was shortly followed by another exemption, this time sought by the Minister for Health on 21 January 2020. Cabinet approved that the proposed waiver be extended till the end of February 2020. It is pertinent to note that the Minister for Tourism and the Prime Minister resigned in November and December 2019, respectively.

4.10.7 A key departure from decisions previously taken by Cabinet was registered in the minutes of the meeting held on 25 February 2020, wherein Cabinet decided that the SHC was not to be granted another waiver in relation to its obligation to submit a performance guarantee. Following the expiry of Government's waiver until 29 February 2020, the SHC failed to submit a performance guarantee as required by the SCA. This situation of default persisted until December 2021, with the NAO noting that within the prevailing context where negotiations between the Government and the SHC had stalled, it was highly unlikely that the performance guarantee was submitted.

4.10.8 The NAO sought the views of the Government and the SHC regarding the several instances when the obligation of the Concessionaire to have a performance guarantee in place, in accordance with the provisions of the SCA, was not honoured. Queried on this non-compliance, the General Counsel SHC International and the Legal Advisor SHC maintained that they were not aware of the reasons underlying the SHC's failure to provide the required performance guarantee.

4.10.9 The views of the Minister for Health regarding the context to the Government's granting of waivers were also obtained by the NAO. The Minister for Health maintained that, in principle, he was against the granting of waivers, for these condoned the Concessionaire's failure to fulfil its obligations. In the brief period within which the Minister for Health was assigned responsibility for contract-related matters concerning the concession (paragraph 3.4.6 refers), the SHC proposed to provide a parent company guarantee instead of the performance guarantee issued by a bank as required in the SCA. That proposed by the SHC was deemed unacceptable by the Minister for Health for, in the event that such a guarantee be called, it would be in the Government's interest that such a guarantee be held by a bank rather than the party in default, that is, the SHC. The SHC consented to that requested by the Minister for Health and informed him that the performance guarantee had been submitted to the Minister for Tourism. It was with this information at hand that the Minister for Health sought Cabinet's approval for a temporary waiver, to allow for the Government to verify the performance guarantee submitted by the SHC. According to the Minister for Health, no such guarantee was provided by the SHC, which led to the Government's decision not to issue any other waivers.

4.10.10 The Minister for Health referred to the second instance when he sought the approval of Cabinet to waive the obligation of the SHC to submit a performance guarantee, which development occurred immediately after the change in Prime Minister. According to the Minister for Health, despite this waiver, the SHC failed to provide a performance guarantee, which in turn led to the Cabinet's decision not to issue other waivers. The Minister for Health conceded that, as a result, the Concessionaire was in default. Conditioning the Government's consideration of this situation of default was the liability it would face in the event of court-declared nullity, in which case the Government would be liable to pay the Concessionaire €100,000,000 and the sum of the lenders' debt incurred.

4.10.11 In submissions to the NAO, the MFH expressed its reservations regarding the waiver granted to the SHC in terms of the Concessionaire's obligation to submit a duly rolled-over performance guarantee. Although the SHC sought to justify its failure to submit a performance guarantee through reference to its substantial turnover, the MFH considered this shortcoming as an indication of the lack of commitment and unprofessionalism on the part of the Concessionaire. Drawing comparisons between the VGH and the SHC, the MFH contended that the situation relating to the performance guarantee worsened under the latter, for the SHC immediately failed to abide by that stipulated in the conditions precedent set out in the SCA.

4.10.12 The MFH informed the NAO of its concerns regarding the gaps when the obligation of the SHC to submit a performance guarantee was not honoured or waived by the Government. Providing an element of context, the MFH maintained its awareness of the SHC's default in submitting a performance guarantee yet sought to address the cause of this situation through negotiations, rather than its consequence. While the negotiation process did not result in the desired outcome and therefore the performance guarantee remained an outstanding issue, the contractual framework provided limited avenues of redress. In this respect, the MFH conceded that the SHC's failure to submit a performance guarantee was not a non-rectifiable event of default and therefore the Ministry was limited in terms of possible action. Furthermore, the MFH was provided with legal guidance that it could not withhold payments on grounds that the SHC had breached the requirement to submit the relevant performance guarantee. In sum, the PS MFH maintained that this shortcoming on the part of the SHC ought not to be attributed to the Ministry's lack of oversight, attention, determination or failure to react by withholding payments. Rather, the PS MFH asserted that this stance resulted from the Ministry's judicious and responsible assessment of the options available to the Government that ensured that the lines of communication between parties remained open, that the sites remained accessible and that health services remained uninterrupted.

4.10.13 Further insight was provided to the NAO by the PS MOT, who recalled that a bank-issued performance guarantee was not submitted by the SHC throughout the period when the concession was under its control, and therefore the Government was exposed to risk throughout. For certain periods, this situation was regularised through the waivers granted by the Government; however, the PS MOT acknowledged that gaps existed within which the SHC's obligation to submit a performance guarantee was not honoured or waived. Seeking further information as to the reason for such gaps, the PS MOT informed the NAO that he was unaware of a specific reason, yet indicated that this situation could, to an extent, be attributed to shortcomings in coordination between the MOT and the MFH at the political level and in terms of governance. However, the PS MOT maintained that the waivers issued by the Government only made sense within a context of possible rectification, until agreement was reached, and that as the situation of stalemate persisted, the sense in granting successive waivers was lost.

4.11 Rectifiable and non-rectifiable concessionaire events of default

4.11.1 The SCA classified breaches by the concessionaire as either rectifiable or non-rectifiable concessionaire events of default. Events of non-observance of obligations by the concessionaire deemed as non-rectifiable comprised the fraudulent or wilful breach of licensed activity regulated by the SCA, abandonment of the concession, insolvency, liquidation, and winding up, be it on the concessionaire's initiative or court order. Any other breach of the concessionaire's obligations arising from any provision of the SCA was to be deemed as a rectifiable concessionaire event of default. The procedure that was to be adhered to in the case of concessionaire events of default was outlined in the SCA.

4.11.2 The NAO enquired whether any non-rectifiable concessionaire events of default were declared when the concession was under the control of the SHC. The MFH stated that no non-rectifiable concessionaire events of default were declared; however, the Ministry emphasised that negotiations at the political level were ongoing throughout the period reviewed by the NAO.

4.11.3 Having established that no non-rectifiable concessionaire events of default were declared, the NAO sought to ascertain whether any rectifiable concessionaire events of default were identified. This Office was not provided with documentation indicating that a rectification notice had been served to the SHC and that therefore a rectifiable concessionaire event of default was registered in the form specified in the SCA. The MFH provided an element of justification to Government's decision to refrain from formally raising such events of default, indicating that it aimed to create a space for discussion on potential solutions to the problems that were being encountered. Elaborating in this respect, the MFH referred to the process of engagement between the Government and the SHC as intended to identify equitable solutions to the hinderances in the implementation of the SCA.

4.11.4 Notwithstanding this, the MFH provided the NAO with information relating to instances of breach by the SHC of obligations imposed through the SCA. One instance cited by the MFH related to the financing of the concession, where despite discussions with relevant authorities and the waivers issued by the Government, the SHC was advised that no fresh waivers for any of the conditions precedent were to be granted by the Government post February 2020. Other instances related to shortcomings in the level of service provided by the SHC. According to the MFH, these were brought to the attention of the SHC, that immediately addressed such matters. Cited as examples in this respect was the drop in surgical and medical output that was mainly attributable to difficulties in recruitment, a reduction in orthotic and prosthetic services, the inefficient use of theatres and helicopter downtime. The MFH referred to its oversight as essential in identifying such breaches.

4.11.5 As negotiations between the Government and the SHC dragged on and faltered, the scope for resolution of breaches to the SCA through discussion lessened. The MFH indicated that there were constant threats to the continuity of services due to delays and difficulties in the replacement of medical and nursing staff. However, acknowledged in this respect was that the SHC sought the recruitment of the relevant resources by the Government through the LSA. The MFH also referred to the industrial action taken at the SLH/KGRH due to the inadequate state of physiotherapy facilities, and a dispute regarding the OPU.

4.11.6 Information relating to the dispute concerning the OPU was sourced by the NAO from the MFH. Based on documentation reviewed, this Office established that the Government had received several complaints from patients utilising services provided by the OPU. The complaints were described as of a serious nature by the MFH. These concerns were exemplified in a case brought to the NAO's attention by the MFH, wherein it was alleged that the SHC was responsible for delays in the setting of appointments, the cancellation of an urgent appointment without prior notice, the poor quality of the diagnoses and advice provided, and the substandard quality of the service received by the patient. To avoid further delays in treatment, the patient decided to pursue private treatment, which resulted in the case being referred to a specialised hospital abroad by the MDH due to its complexity. Despite recommendations for treatment issued by the hospital, the SHC did not follow through with these recommendations, which resulted in further problems for this patient.

4.11.7 In the further review of documentation provided, the NAO noted that the MFH had expressed its concerns regarding the complaints received and the level and quality of the services being offered by the OPU. The concerns highlighted by the MFH included delays in the delivery of orthotic services by the OPU; the fact that customer satisfaction surveys issued by the SHC did not capture areas of concern, such as recurrent patient complaints or the timeliness of the provision of orthoses; temporary footwear stored at the MDH not being utilised by OPU; the significant delays in the provision of transparent treatment pathways; the unavailability of temporary footwear required to enable proper foot care immediately after amputation; appointments for fittings given with significant delay; the poor quality of footwear provided; and failure to follow-up patients to assess the suitability of footwear provided. The MFH noted that these issues were long outstanding, and predated the COVID-19 pandemic, with little or no improvement registered over time. Despite the assurance provided by the SHC, correspondence reviewed by the NAO indicated that patient complaints regarding the quality of service provided persisted. Of note to this Office was that the issues concerning the OPU were discussed during a QAB meeting in November 2021, wherein the Consultant MFH contended that the Government would have to declare a perceived breach of contract by the SHC.

4.11.8 Despite these instances of possible breach, the NAO was not provided with evidence that Government registered any rectifiable concessionaire event of default.

4.12 Other obligations arising from the Services Concession Agreement

Reconciling the conditions precedent

4.12.1 Several of the conditions precedent stipulated in the SCA were fulfilled when the concession was under the control of the VGH. This mainly resulted from the obligation on the parties to meet these requirements prior to entry into the concession agreements. Fulfilment of these conditions at this early stage meant that no action was necessary on the part of the SHC. Requirements met in this respect included the delivery of a certified true copy of the concessionaire's register of members and directors as at the date of the SCA, a resolution by the concessionaire's shareholders authorising the signatories to appear on its behalf on the SCA, a copy of the concessionaire's memorandum and articles of association, a declaration by the concessionaire that no events of default existed as at the date of the SCA, the ratification of the HSDA and the Emphyteutical Deed, and the finalisation of a handover plan.

4.12.2 Other conditions precedent were addressed by the NAO in earlier parts of this section of the report. These relate to the provision by the concessionaire of the requisite insurance policies (section 4.6), evidence that the primary lenders financing the concession were in place and that the relevant financing agreements were consented to by the Government (4.8), and a performance guarantee secured (4.10).

4.12.3 The remaining condition precedent required the provision to Government of evidence that the Engineering, Procurement and Construction (EPC) contractor has been engaged by the concessionaire to carry out the works by providing a copy of the relative contract. In view of the works undertaken in relation to the Barts Medical School, the NAO requested information on the engagement of the EPC contractor by the SHC. The MFH indicated that its responsibility was limited to the health delivery aspect of the concession. The capex element, including the construction of the Barts Medical School, did not fall within the Ministry's oversight and management. The MFH contended that it was neither requested to nor participated in any management oversight of this element of the project. The Ministry did not have any certification for the building. It remained unclear to the NAO which entity of Government was responsible for oversight of this function.

Concessionaire and Government warranties

4.12.4 Provided for in the SCA were several obligations that were to be warranted by the parties. Those borne by the SHC included that it was to duly file, register or record documents under any legal or statutory obligation, which default might have a material adverse effect on the fulfilment of the Concessionaire's obligations under the Transaction Agreements. Other warranties included the obligation to undertake the necessary checks to ensure the validity of its registration as a limited liability company; the preparation of audited consolidated financial statements; and that no revenue, capital or other economic or financial support would be required by the SHC from the Government throughout the concession period apart from the obligations already provided in the Transaction Agreements. On the other hand, the Government warranted that it had the power and authority to enter into the Transaction Agreements without contravening any applicable law.

4.12.5 Against this context, the NAO enquired with the MFH whether any breaches in the warranties borne by the SHC were detected by the Ministry and, in the affirmative, what action was taken. The MFH informed this Office that the Ministry was never in a position to identify any breaches of the warranties imposed on the SHC.

Nursing college

4.12.6 Another obligation of the Concessionaire stipulated in the SCA related to the design, equipping, construction and operation of a university-level nursing college within the site of the SLH. The NAO sought the views of the MOT and the MFH as to whether any progress was registered by the SHC in relation to this obligation given that the college was to be operational within 48 months of the effective date, that is, by 1 June 2020. In replies received, the MOT referred the matter to the MFH, while the MFH indicated that the Ministry had no involvement in the setting up of the nursing college.

Approval of engagement of subcontractors

4.12.7 The SCA stipulates certain requirements for sub-contracting and material contracts, whereby it regulated the mechanism for the approval by the Government of sub-contractors, the procedure to be followed when resort to sub-contracting is made, the obligations of the concessionaire in terms of the achievement of the contractual targets and oversight of the sub-contractors. Other provisions of the SCA granted the Government access to sub-contracts.

4.12.8 In this context, the NAO sought information relating to all requests for approval forwarded to the Government, and approvals granted thereto, with respect to the engagement of contractors, or changes in the agreed terms of engagement of contractors, as well as copies of sub-contracts or amendments to sub-contracts. Requests to this effect were submitted to the MOT and the MFH. The MOT informed the NAO that enquiries were to be directed to the MFH. In turn, the MFH indicated that during the period when responsibility for oversight over the construction element of the concession was under the remit of the Ministry, no such requests were submitted. However, the MFH noted that prior to this period, responsibility for oversight of the construction works was not under the remit of the Ministry.

Chapter 5| Implementation of the Health Services Delivery Agreement

5.1 Overview of the Health Services Delivery Agreement

5.1.1 The Government, represented by the Minister for Energy and Health, and VGH Management Ltd, represented by the Director VGH, 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.

5.1.2 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; however, this period was later extended and, more significantly, rendered contingent on the issuance of the relative licences and permits required by the Concessionaire through an Addendum to the SCA. In February 2018, when the concession was transferred from the VGH to the SHC, the applicable frame of reference was still that prior to the completion date, which 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.

5.1.3 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, and an additional charge for each bed that was ready for use at the SLH. 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.

5.1.4 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.

5.1.5 Key service inclusions in the minimum charge were:

a. medical services as outlined in the Agreement;

b. 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;

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;

f. inpatient access to consultations with specialty visiting doctors;

g. up to 3,300 surgery hours; magnetic resonance imaging;

h. all services offered at the KGRH; and

i. a state-of-the-art rehabilitation centre at the SLH serving inpatients and outpatients.

5.1.6 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.

5.1.7 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.

5.1.8 In sum, the minimum service delivery fee payable by Government as regulated by the HSDA stood at an annual €72,856,500 (Figure 16 refers).

Figure 16 | HSDA 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**

5.1.9 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.

5.1.10 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 the bed type. The daily 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.

5.1.11 On 7 December 2015, that is, a mere one week after entry into the HSDA, two Addenda to the Agreement were entered into by the Government and VGH Management Ltd. Representing the Government in these Addenda was the Minister for Energy and Health, while the Director VGH represented VGH Management Ltd. Significant changes to the HSDA were effected by means of these Addenda. Through the first Addendum, the Government and the VGH agreed to increase the minimum beds service and guarantee by an additional 100 beds. The NAO estimated the additional annual cost to Government emanating from the first Addendum as €10,402,500. The second Addendum introduced notable changes in the services to be provided by the Concessionaire. The relinquished services did not translate in any cost savings to Government. The NAO was informed that these Addenda were negotiated prior to entry into the HSDA.

5.1.12 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 the Director VGH. Through this Addendum, the parties agreed to extend the date of the provision of the additional beds cited in the first Addendum from 1 January 2018 to not later than 1 January 2020. This Addendum was not authorised by Cabinet.

5.1.13 With the acquisition of VGH Ltd by SHC International Ltd on 16 February 2018, and by implication the change in control over VGH Management Ltd, responsibility for the HSDA shifted accordingly. Hereunder is an account of developments relating to the implementation by VGH Management

Ltd, later renamed Steward Malta Management Ltd, of its obligations emanating from the HSDA. This report resumes the review of implementation from February 2018 till December 2021.

5.2 The Quality and Assurance Board

5.2.1 The first aspect of implementation reviewed by the NAO relating to the HSDA was that of service delivery and its monitoring in terms of quality and performance standards. Responsibility for this function was primarily vested in the QAB. Stipulated in the HSDA was that the QAB was to meet, at a minimum, on a monthly basis and was responsible for the oversight, direction and overall monitoring of the performance of the concessionaire in terms of the service levels to be provided, the Government's requirements for the services, and the KPIs as outlined in the Agreement.

5.2.2 Following the transfer of the concession from the VGH to the SHC in February 2018, the NAO established that efforts to reconvene the QAB were made in April 2018. Subsequent to the initiative taken by the Minister for Health in requesting the President SHC Malta to restart the QAB meetings, the Consultant MFH contacted the Chair QAB to take the necessary action in this regard. Following this intervention, the QAB initially met on 23 April 2018. In submissions to the NAO, the MFH asserted that clinical care was given foremost attention by the Ministry and priority over other elements of the concession such as corporate governance and the financing of the concession.

Meeting held on 23 April 2018

5.2.3 From the records made available to the NAO with respect to the QAB meeting held on 23 April 2018, this Office established that present for the meeting were the Chair QAB, who was a representative of the Barts Medical School, the Consultant MFH and several representatives of the SHC.

5.2.4 The QAB resolved that meetings were to be held on a monthly basis going forward and that this first meeting was to serve as an opportunity for the Board to flag issues of concern. Also noted in the minutes was that a new CEO GGH had been appointed to replace the former incumbent, who was now appointed President SHC Malta yet remained a member of the QAB. In terms of continuity, the only issue that remained pending from the previous meeting held on 12 December 2017, when the concession was still under the control of the VGH, was that relating to the GGH waiting list data, for which an update was to be provided.

5.2.5 Noted in the minutes was that data for Q1 2018 had been collected for most KPIs, albeit manually, as the IT system required to automate this process had not been installed. The QAB agreed that the final KPI reports were to be endorsed by the CEO GGH and the CEO KGRH prior to referral to the QAB and the Government.

5.2.6 According to the QAB, elements of progress were registered by the GGH in terms of the level of activity in orthopaedic joint replacement and urology services, and at the KGRH in respect of its orthotic waiting list. However, concerns were raised by the Consultant MFH regarding theatre output and waiting times in the specialisations of Ears, Nose and Throat (ENT), and orthopaedics. Another concern expressed by the Consultant MFH related to the quality of care that was being provided to renal patients on dialysis at the GGH. Other limitations in the delivery of health services were linked to issues of recruitment, with the CEO KGRH noting that certain staff requirements were deemed urgent.

5.2.7 Of interest was that, according to the minutes, the change in the composition of the QAB, understood by the NAO as arising from the inclusion of another SHC representative, required an amendment to the Board's Charter. The QAB resolved that the SHC would amend and circulate the revised Charter for endorsement at the Board's next meeting. The Charter was to be valid for a year from authorisation.

Meeting held on 15 May 2018

5.2.8 The second meeting of the QAB with the concession under the control of the SHC was held on 15 May 2018, with the same members as for the previous meeting in attendance. Following up on that agreed in the preceding meeting, the SHC presented an amended copy of the QAB Charter. Outlined in this Charter were the general principles that were to guide the QAB, its role, duties and functions, the procedures that were to regulate the operations of the Board and alterations to its Charter.

5.2.9 In the QAB's discussion of matters arising from the previous meeting's minutes, the Consultant MFH expressed severe criticism relating to the operating theatre output, particularly with respect to the ophthalmic, ENT and orthopaedic lists. Nevertheless, the Consultant MFH acknowledged improvement in the outpatients waiting list. Moreover, the Consultant MFH deemed unacceptable that numerous patients on renal dialysis being treated at the GGH were not being adequately monitored and evaluated. Reference was also made to the animosity that had arisen in terms of staff employed directly by the SHC and those leased by the Government through the LSA. In addition, various aspects of the dysfunctional relationship between the GGH and the MDH emerged, especially in terms of the sharing of resources.

5.2.10 An element of progress was registered by the QAB in that the site located for the Anatomy Centre was deemed excellent for its purpose by the SHC. Noted in the QAB minutes was that the designs for refurbishment were being finalised and the planned end date for the works to be undertaken was September 2018.

5.2.11 In terms of the surgical output at the GGH, of note to the NAO were the concerns expressed by the Consultant MFH regarding specialisations where the GGH was underperforming and where, in some cases, the MDH was compensating for such underperformance, as was the case for cataract interventions. Also noted was that the major incident plan for the GGH had not been drawn up and the Consultant MFH urged action in this respect. Furthermore, staffing concerns bearing impact on the GGH were discussed during the QAB meeting, with reference made to the difficulties in sourcing medical staff.

5.2.12 Similarly, staff-related issues were highlighted with respect to the KGRH. In this case, the CEO KGRH stated that new recruits trained by the SHC were quickly transferring to Government positions and emphasised that this was a recurring problem. Another staff-related issue concerned the extension of physiotherapy sessions at the KGRH. The Consultant MFH highlighted the limitations in the availability of physiotherapy services in the afternoons and weekends. While the CEO KGRH acknowledged this concern, he referred to the resistance posed by the unions on the matter. Nevertheless, the CEO KGRH emphasised the improvement registered in respect of the waiting list for prosthesis, reduced to almost nil and deemed as an indication that the service was operating efficiently. A final matter raised by the CEO KGRH was the need to discuss the masterplan for the sites, which would allow for the required infrastructural improvements to the hospital to be made.

Meeting held on 21 June 2018

5.2.13 The third meeting of the QAB commenced with the introduction of a new member to the Board, appointed to assist the representative of the Government. In its discussion of the matters arising from the minutes of its previous meeting, the QAB took stock of the KPI reports at hand and resolved to discuss the reports corresponding to the GGH and the KGRH for Q1 and Q2 2018 in August 2018. An additional matter discussed related to operating theatre output at the GGH, where the SHC indicated that the transfer of Maltese patients to the GGH was being considered. Concern was also expressed by the Consultant MFH regarding the level of output in relation to the urology specialisation at the GGH. Although the SHC maintained that it was not feasible to increase output, the Consultant MFH referred to the obligations stipulated in the HSDA that were not being met. An update was also provided with respect to the KGRH, whereby the QAB was informed of key orthotic and prosthetic tenders that were being processed, and the fact that no developments were registered in attempts to extend physiotherapy hours of service.

5.2.14 Other issues discussed during this QAB meeting comprised the care of renal patients at the GGH, concerns relating to patient handling, isolation policy and infection control at the KGRH, and the major incident plan for the GGH.

A period of hiatus

5.2.15 Based on documentation made available, the NAO established that the QAB failed to meet in July and August 2018. However, correspondence reviewed by this Office illustrated the attempts made by the Consultant MFH in mid to late August 2018 so that the Chair QAB reconvenes the Board. In the several exchanges made, the Consultant MFH referred to the obligation imposed by the HSDA for the QAB to meet once a month and highlighted the need to discuss the KPIs and address other technical issues.

5.2.16 An element of explanation as to the gap in the QAB's meetings was provided by the President SHC Malta, who indicated that the CEO SHC International sought to propose revisions to the way the QAB functioned. In this context, the President SHC Malta proposed postponing the August 2018 meeting of the QAB. Notwithstanding this, the Consultant MFH informed the Minister for Health and the PS MFH of this situation, who in turn advised that the QAB ought to meet anyway. The Consultant MFH persisted in attempts at resuming QAB meetings through several reminders sent to all stakeholders represented on the Board.

Meeting held on 26 October 2018

5.2.17 The QAB was ultimately reconvened on 26 October 2018. According to the minutes, this meeting was to serve as an update to the context of the discussions being held between the Government and the SHC, particularly in view of the three-month break from the previous meeting held. With respect to the composition of the QAB, agreement was reached to retain the present representation and for the Board to continue to meet monthly. The Board also resolved that if for some reason the QAB could not convene, technical meetings between the Government and the SHC were to be organised instead.

5.2.18 The next matter discussed by the QAB related to the KPIs. The Board highlighted the need for consensus on the KPIs to be reported on, which were to be amended following review and mutual agreement. The Consultant MFH indicated that relevant KPIs, such as waiting time for certain services, were to be included to ensure accessibility, adequate output and value for money. Reporting on these KPIs was to be retained on a quarterly basis. The introduction of customer satisfaction surveys was referred to by the Consultant MFH, who indicated that reporting to Government in this respect was to be at least every six-months. Other matters discussed included the setting up of a customer care department at the GGH and the KGRH, the designation of an area within the hospital for study, and an update to disaster planning.

Meeting held on 21 November 2018

5.2.19 The next meeting held by the QAB was that on 21 November 2018. Reporting on progress registered from the previous meeting, it was indicated that the KPI quarterly reports for the GGH and the KGRH, presumably relating to Q3 2018, and those corresponding to the GGH air ambulance service were submitted by the SHC to the Consultant MFH. Noted was that the KPIs pertaining to the OPU were still being compiled.

5.2.20 An update was provided regarding the Orthopaedic Ward at the GGH that was scheduled to start operating in January 2019. To this end, the need for additional nurses was identified. Another matter captured in the minutes related to the cardiology specialisation at the GGH. The NAO understood that some form of disagreement regarding patient lists, additional clinics and the outpatient clinic persisted between the Clinical Chair Cardiology and the SHC, and that failing agreement, the matter was to be referred to the Minister for Health.

5.2.21 The Consultant MFH reiterated the need for the KGRH to extend physiotherapy sessions to afternoons and weekends, a matter first brought up for discussion by the QAB as early as May 2018. Reference was also made to the customer satisfaction surveys that were to commence in Q1 2019.

5.2.22 The QAB's discussion concluded by revisiting the KPIs. It was acknowledged that a final set of KPIs was to be determined and the method of their periodical review set. Also identified was that the layout of the reports was to be similar for both hospitals, surgical activity defined and standardised, and the inclusion of waiting times as a separate indicator.

Meeting held on 19 December 2018

5.2.23 The final meeting of the QAB held in 2018 was that of 19 December 2018. Reporting on actions that emanated from previous meetings, progress was registered in relation to the cardiology specialisation at the GGH. In an update provided, it was indicated that agreement had been reached following a meeting with the Clinical Chair Cardiology. This resulted in a significant number of procedures being carried out, thereby reducing waiting times. Less productive was the discussion relating to the setting and review of the KPIs that were to regulate service provision, where an element of divergence emerged between the Government and the SHC. Another issue brought up by the Government representative on the QAB was the importance of monitoring and improving waiting times for all outpatient clinics at the GGH and the KGRH.

5.2.24 In respect of the planned construction works, the Consultant MFH reported that the SHC had indicated that works at the GGH and the KGRH would be concluded four years after entry into the revised concession agreements. However, he maintained that in the interim, the IT system could be set up, the Orthopaedic Ward opened and new services introduced at the GGH. Nonetheless, the President SHC Malta stated that these interim projects were still under review as they were to fit within the context of the broader plan for the concession, which plan was to be communicated in Q1 2019.

5.2.25 In discussions on other matters, the CEO GGH reported an improvement in terms of the accessibility of services, stating that outpatient clinics were also being held in the afternoon. The Consultant MFH encouraged the SHC to explore and assess ways of improving patient experience.

Meeting held on 29 January 2019

5.2.26 The first meeting held by the QAB in 2019 was that of 29 January 2019. During this meeting, concerns were raised by the Consultant MFH on the delay in the opening of the new orthopaedic ward at the GGH and that progress registered was unsatisfactory. On a more positive note, an SHC representative indicated that the cardiology waiting lists at the GGH had been addressed and that cardiology outpatient clinics were being organised on a weekly basis. On the other hand, the Consultant MFH referred to data indicative of increased waiting times for the outpatient clinics in ENT and urology at the GGH; however, the QAB agreed that more definite action would be taken once these figures were updated to reflect more recent activity.

5.2.27 With respect to the KPIs, the SHC representative confirmed that the customer satisfaction surveys were launched at the GGH in January 2019, while the CEO KGRH indicated that efforts were underway to align the surveys prior to its rollout to the KGRH.

Meeting held on 1 March 2019

5.2.28 The next meeting of the QAB was held on 1 March 2019. The NAO noted that certain actions remained pending from the previous meeting, namely the submission of the KPI reports corresponding to Q4 2018 for the GGH and the KGRH to the MFH, the compilation of GGH outpatient waiting time data and the scheduling for the lessons learnt meeting for 2018.

5.2.29 Progress was registered with respect to the orthopaedic ward at the GGH, which was planned for completion by mid-April 2019. The QAB also discussed training needs, with the Consultant MFH highlighting the necessity of identifying training needs at both hospitals and implementing such a programme. An SHC representative indicated that a task force had been set up to assist with this process. Issues concerning the recruitment of medical personnel were referred to by the Board. The President SHC Malta brought to the fore the difficulties encountered when recruiting staff for certain specialisations. While the Consultant MFH indicated that certain recruitment requirements were subject to sectoral agreements with unions, the President SHC Malta stated that she would be seeking direction from the Minister for Health.

5.2.30 In submissions to the NAO, the Minister for Health noted that matters discussed by the QAB were occasionally referred for his attention, particularly when issues arose that were not covered by the concession but required the Government’s direction. The Minister for Health indicated that meetings were held monthly and attended by the Minister himself, the PS MFH, the Consultant MFH and the President SHC Malta. According to the Minister for Health, no minutes were retained as action points were taken note of for eventual follow up.

Meeting held on 25 March 2019

5.2.31 The QAB subsequently met on 25 March 2019. The Board was provided with an update on action taken from the previous meeting, whereby it was noted that the KPI reports for Q4 2018 were submitted and the lessons learnt meeting at the GGH held. However, the compilation of the outpatient waiting times figures at the GGH remained pending as did the scheduling of the lessons learnt meeting with the KGRH.

5.2.32 Inferred from the QAB minutes was that the training plan for the GGH and the KGRH for 2019 had been drawn up by the SHC and was to be referred to the Consultant MFH. Discussions on the implementation of the training plan were underway, yet acknowledged were the critical challenges that persisted in this respect, namely lack of staff and the need to provide protected time for training to increase participation. The Consultant MFH informed the SHC that he would be monitoring progress in this respect and escalating matters should this not be satisfactory, and proposed that the Concessionaire facilitate and incentivise training.

5.2.33 Emphasis was again made on the difficulties encountered by the SHC to recruit medical staff for certain specialities, citing the need to waive the required two-year experience post Certificate of Completion of Specialist Training. The President SHC Malta referred to the expiry of the sectoral agreement that qualified eligibility criteria and requested that the Government included the Concessionaire's concerns during discussions with the union. Furthermore, the President SHC Malta indicated that the matter had been discussed with the Minister for Health.

5.2.34 The QAB was provided with an update in terms of progress registered in connection with the orthopaedic ward at the GGH, which was scheduled for completion by mid-April 2019. The Consultant MFH was tasked with facilitating the deployment of the additional nurses required. With respect to the GGH's cardiology service, noted by the Board was that the waiting time issue discussed in earlier meetings had been fully addressed.

5.2.35 The Board's attention then shifted to the KGRH. The Consultant MFH referred to the customer satisfaction survey, which rated the hospital's facilities at 60 per cent. He indicated that the SHC was to take the necessary action as the hospital was deemed shabby. The President SHC Malta noted that a request for interim infrastructural improvements had already been internally raised. Another issue raised by the CEO KGRH related to the transfer of nurses without replacement, which matter was having an effect on the quality of service provided.

Meeting held on 15 April 2019

5.2.36 The fourth meeting of the QAB in 2019 was held on 15 April. During this meeting, several items of discussion addressed by the Board in earlier instances were revisited, including the matter concerning medical staff. An element of progress was registered in relation to training, for the SHC submitted the 2019 training plan for the GGH to the Consultant MFH, while that for the KGRH was to be forwarded shortly.

5.2.37 The KGRH patient satisfaction survey was discussed at length by the QAB. Of note was the low response rate, which stood at 30 per cent for Q4 2018. The CEO KGRH proposed efforts that could be taken to improve this rate, citing the inclusion of long-term care patients as one such measure. Discussion then shifted to the infrastructural improvements required at the KGRH. The Consultant MFH asserted that it would have been ideal had other areas been upgraded besides the reception. The President SHC Malta maintained that the improvements made to the reception area were not merely aesthetic but required to revamp the hospital's front office function. Other improvements would be undertaken once the masterplan was concluded.

5.2.38 Mixed results were registered in terms of hospital waiting times. The Consultant MFH acknowledged that progress had been registered with respect to the cardiology service; however, increases in waiting time had been noted, albeit to varying degrees, in relation to orthopaedic, ENT and diabetic services. Referral to specialists at the MDH was discussed as a possible solution to address waiting times.

Meeting held on 5 June 2019

5.2.39 Another meeting of the QAB was held on 5 June 2019. The Consultant MFH expressed concern on the absence of the Chair QAB. In response, the President SHC Malta stated that it was not always possible to align the availabilities of Board members with when the Chair was in Malta. In these instances, the President SHC Malta deputised as Chair so that meetings of the Board could be held monthly. The NAO noted that the Chair QAB had not attended QAB meetings throughout 2019.

5.2.40 The concept of categorising medical services under care packages was discussed by the QAB. The Consultant MFH noted that different care packages were to be identified to ensure that rehabilitation did not extend beyond a certain timeframe, thereby distinguishing between rehabilitation and long-term care. These care packages were to define the length of stay, depending on the type and hours of care needed for each patient. The Consultant MFH suggested the implementation of three care packages, namely a medical geriatrics care package, an intensive rehabilitation care package and a semi-intensive rehabilitation care package. Notwithstanding this, the Consultant MFH highlighted that the Government was not in agreement with the SHC on the allocation of beds at the KGRH for rehabilitation and geriatric care. Resort to external expertise was proposed.

5.2.41 Other matters discussed by the QAB relating to training, waiting times and recruitment. In the case of the latter, the Board was updated on progress registered in terms of newly engaged medical personnel despite the gaps that remained for certain specialisations. The Consultant MFH also drew the Board's attention to the need for ownership to be assumed in respect of the GGH emergency plan and the low response rate for the KGRH patient satisfaction survey.

Meeting held on 1 July 2019

5.2.42 For the meeting of the QAB held on 1 July 2019, the NAO was only provided with a partial record of the minutes. At the start of this meeting, the Consultant MFH raised a point regarding the role of the Chair QAB in calling meetings in accordance with contractual requirements and requested that the President SHC Malta be appointed as Deputy Chair to the Board. The Chair QAB did not object to this recommendation.

5.2.43 In the absence of complete minutes, the NAO obtained an element of understanding of that discussed by the QAB through the review of the meeting agenda. Listed as agenda items were matters relating to the KGRH, an update on major incident planning for the GGH, the desired improvements in patient accessibility to care and other business. In the latter, the possibility of the GGH and the KGRH being recognised as teaching hospitals was delved into.

Meeting held on 8 August 2019

5.2.44 The NAO was similarly not provided with records of the QAB meeting held on 8 August 2019 except for the agenda. This Office could not ascertain whether this meeting was in fact held. According to the agenda for this meeting, the QAB was to be provided with an update on major incident planning for Gozo, the customer satisfaction survey, the health workers satisfaction survey and the efforts undertaken to reduce waiting times for the new outpatients clinics. Also listed as agenda items was the sourcing of supplementary data on acute psychiatry and long-term care at the GGH, progress on the procurement of specific equipment, and a presentation by the CEO KGRH on rehabilitation in Malta.

5.2.45 The NAO was not provided with records indicating that the QAB met in September 2019. The ensuing meeting by the Board was held in October 2019.

Meeting held on 3 October 2019

5.2.46 Several issues relating to the GGH were discussed by the QAB during the meeting of 3 October 2019. An update on the major incident plan for Gozo was provided to the QAB, with the Board informed that a consultant had been engaged by the SHC, who assumed responsibility for this function. While the SHC-engaged consultant had already held meetings with key stakeholders, the Consultant MFH emphasised the need to have a good working relationship with the MDH. In terms of waiting times for cardiology services at the GGH, counter to progress registered previously, the QAB noted that these were again accruing. The Board agreed that greater cooperation between the GGH and the MDH was required to address this matter. In addition, the President SHC Malta informed the Board that the customer satisfaction survey at the GGH was no longer carried out on a pilot basis but was now ongoing. The QAB was subsequently updated with respect to progress registered in the procurement of medical equipment, with a point of discussion arising in terms of whether it was the Government or the SHC that was to cover the costs of such procurement. Other matters raised related to the GGH Emergency Department, with specific reference made to the ongoing efforts undertaken by the SHC to ensure sufficient medical personnel to man the Department and protocols regarding the transfer of emergency patients to the MDH transported by helicopter.

5.2.47 As regards the KGRH, the QAB was informed that savings were registered in connection with orthotic and prosthetic expenditure, partly due to the commencement of production of such devices in Malta and in part attributable to improved internal controls at the hospital. The CEO KGRH enquired whether a national plan or strategy for rehabilitation services existed, particularly in view of the planned investment in infrastructure at the SLH. He asserted that this would ensure better planning, reduce duplication and avoid gaps in services. The Consultant MFH indicated that he was not aware of any such plan or policy.

Meeting held on 13 November 2019

5.2.48 The QAB next met on 13 November 2019. In following up on progress registered since the previous meeting, updates were provided regarding the standards for teaching hospitals and the KPIs for Q3 2019 with respect to the GGH and the KGRH. In addition, updates concerning the GGH were provided in relation to cardiology services, the procurement of medical equipment and job plans for anaesthetists.

5.2.49 The CEO GGH informed the Board of the complaint system set up at the GGH. The Consultant MFH stressed the need to promote awareness as to the existence of this system and to respond to complaints in a timely manner. On the other hand, the Chair QAB highlighted the importance of assigning this function to ensure ownership.

5.2.50 Progress was registered in terms of major incident planning following the appointment of a head of emergency medicine at the GGH. Noted in this context was that meetings were held with key stakeholders and that several nurses had undergone training in this field. Contributing to the discussion, the Consultant MFH proposed that job cards ought to be drafted for critical officials. This proposal was endorsed by the QAB.

5.2.51 Of note to the NAO were the concerns raised by the Consultant MFH regarding the fact that there were no fire doors, smoke detectors or a medical evacuation plan at the GGH. The President SHC Malta informed the Board that fire safety training had been carried out at the KGRH and was planned for the GGH. Furthermore, the CEO GGH referred to the fire safety equipment available on site and agreed to draft an evacuation plan by Q1 2020.

5.2.52 Other matters discussed by the QAB comprised the several training initiatives planned for the GGH and the KGRH, and the introduction of epidural anaesthesia at the GGH. Another matter raised was that relating to the handover procedures that were to be followed by doctors at the GGH, in relation to which the Consultant MFH expressed concern. In turn, the President SHC Malta referred to a union directive in effect at the KGRH that precluded nursing staff from accepting handover from allied professionals. Finally, the Board's attention shifted onto the setting up of an ethics committee at both hospitals.

Meeting held on 16 December 2019

5.2.53 The last meeting of the QAB in 2019 was that held on 16 December. Reporting on developments from the previous meeting, the QAB noted that the KPI reports for both hospitals for Q3 2019 were forwarded by the SHC to the Consultant MFH. In terms of fire safety, the relevant plans and training at the KGRH were concluded while that for the GGH commenced. As regards cardiology, the need to draft standard operating procedures for time critical transfers and a protocol was highlighted by the Board, as was the possible entry into a service level agreement with the MDH for cardiology services. Another matter followed up concerned the insufficient personnel for anaesthesia deployed at the GGH, wherein the QAB agreed that the SHC would request additional resources from the MFH. Regarding major incident planning in Gozo, while some improvement was registered with respect to the refurbishment of a dedicated eight-bed area, the Consultant MFH remained dissatisfied with progress made and warned that should matters remain as is, he would have to declare a breach of contract.

5.2.54 The discussion then moved on to the Q3 2019 clinical performance reports. In relation to the GGH, the Consultant MFH referred to several aspects of the performance reports where the Concessionaire's output had decreased, citing as examples the outpatient waiting lists that were increasing and that general surgery procedures had dropped by 15 to 30 per cent. The President SHC Malta contested the validity of the waiting time data, while the CEO GGH countered with reference to clinical services where improvements were registered. The QAB agreed that the GGH would review waiting times. A similar concern on clinical performance was noted with respect to the KGRH, wherein the mortality rate and transfers to MDH increased, while hospital occupancy decreased. The CEO KGRH provided possible explanations accounting for the decline in performance, partly attributing this to the closure of a ward due to refurbishment works and changes in the profile of patients referred to the hospital. In the case of the latter, the QAB resolved that the CEO KGRH was to provide feedback regarding patient cohorts.

5.2.55 Another aspect discussed by the QAB related to the designs of the new rehabilitation hospital. The CEO KGRH indicated that his main concern was whether the gym space allocated was sufficient to cater for the number of patients projected. The Consultant MFH acknowledged the increase in bed capacity while the available gym space remained the same; however, proposed the more efficient use of the gym throughout the day by including afternoon sessions as a possible solution.

5.2.56 In other matters discussed, the Consultant MFH informed the QAB that in view of the prevailing political situation, related changes could delay the Government's decision-making process. Concluding on a positive note, the Consultant MFH expressed satisfaction with the incident reporting system undertaken on the initiative of the GGH. The President SHC Malta also referred to the positive feedback received by the GGH in terms of quality standards and quality management.

Meeting held on 27 January 2020

5.2.57 The QAB's next meeting was held on 27 January 2020, which was to be its only meeting for the year. The NAO noted that, from this point onwards, meetings of the QAB were chaired by the President SHC Malta, even in instances when the representative of the Barts Medical School and previous Chair of the Board was present.

5.2.58 As part of the discussion on matters arising, the President SHC Malta noted that meetings were held with various stakeholders since the last Board meeting, with a protocol in place for time critical transfers and agreement reached with the MDH regarding the strengthening of cardiology services at the GGH through the appointment of a shared consultant. In relation to the major incident plan, a draft was being reviewed by a multidisciplinary team and a timeline had been established. Elaborating on this matter, the President SHC Malta presented a strategic outline of this plan and noted that a committee had been established and tasked with deliverables and timelines for the different components of the plan. Operational details regarding this plan ensued. A copy of the Emergency Operations Plan compiled by SHC, dated March 2020, was made available to the NAO by the MFH.

5.2.59 The clinical performance reports of Q3 2019 that were discussed during the previous QAB meeting were again brought up. The President SHC Malta noted that the system-generated report for waiting times was inaccurate, as it differed significantly from waiting times extracted manually from the same system. It was clarified that reporting would be done manually until the matter was resolved. In turn, the CEO GGH noted that there were no waiting lists for orthopaedic surgery and stated that any decline in productivity was due to lower demand. Further commenting, the President SHC Malta and the CEO GGH reported that there were no waiting times for general surgery.

5.2.60 Other positive developments were noted by the Consultant MFH, comprising the refurbishment of the physiotherapy outpatient department and a rehabilitation ward at the KGRH, as well as a new 28-bed ward at the same hospital. Regarding the latter ward, the President SHC Malta specified that works on this new ward requested by the Government had proceeded on time and were to be finalised by end January 2020. Since funding for this ward was to be based on a different model, it was expected that the SHC would directly cover the costs of the staff required for this ward. Noted in the minutes was that the SHC was awaiting confirmation from the Government regarding funding and had written to the PS MFH in this respect.

5.2.61 Also discussed during this meeting were the HR issues pending with the MFH. The President SHC Malta proposed that a meeting in this respect be held with the MFH at least monthly to expedite decisions. The Consultant MFH acknowledged that an improvement in communication was required, expressed agreement to that proposed and suggested the attendance of the CMO to facilitate matters. The CEO GGH lamented about the delay in the address of these HR issues and noted that the MFH only reacted when industrial action was taken.

5.2.62 The President SHC Malta provided the QAB with an update on the air ambulance service. A newer helicopter would be used as the primary air ambulance, with a similar second aircraft serving as a backup. This would come at a significant additional cost not covered by the Government reimbursement to the SHC; however, the President SHC Malta maintained that this reflected the Concessionaire's commitment to the community. Such an arrangement also ensured that any downtime would not require the intervention of the Armed Forces of Malta and saved at least an hour for time-critical transfers. The new air ambulance was planned to commence operations in March 2020.

5.2.63 Several other topics were discussed during this meeting, including new services at the GGH, employment matters and the KGRH admission criteria. The CEO GGH noted that optometry clinics had been introduced on a weekly basis as part of the hospital's outpatient service, together with additional clinics in palliative care. The President SHC Malta and the CEO GGH further noted that VGH-employed anaesthetists were to transition to Government employment as had been requested by the SHC following the agreement reached between the Government and the MAM. Furthermore, the recruitment situation at the GGH emergency department was noted as being slow by the SHC due to the MFH's insistence on recruiting EU citizens. A separate meeting between the GGH and the MFH was proposed to address this matter. Regarding the admission criteria at the KGRH, the Consultant MFH noted that only one third of patients referred were accepted. In response, the CEO KGRH asserted that admission criteria had been established and agreed in 2011, that every patient was to assessed by a KGRH consultant and that care pathways were to be identified according to individual treatment needs. The CEO KGRH noted that patients who did not qualify for rehabilitation and needed long-term care were to be directly referred to homes that provided long-term care.

A second hiatus

5.2.64 Despite that the minutes of the QAB meeting held on 27 January 2020 referred to the scheduling of the subsequent meeting on 26 February 2020, the NAO was not provided with records indicating that the meeting was in fact held. Following enquiries made by the NAO, the SHC informed this Office that a meeting was held on 14 July 2020. According to the SHC, no meetings were held between February and July 2020 due to the control measures that were enforced by the Government until end June 2020 to prevent the transmission of COVID-19. Following the July 2020 meeting, another surge in COVID-19 levels was experienced leading to a further suspension of QAB meetings. These resumed in 2021 with the roll out of a vaccination programme. That stated by the SHC was corroborated by the Consultant MFH.

Meeting held on 14 July 2020

5.2.65 The second and last meeting of the QAB for the year was held on 14 July 2020. Following approval of the minutes of the previous meeting, the President SHC Malta gave a presentation on the changes in clinical services and the GGH and KGRH infrastructure made by SHC in preparedness for the COVID-19 pandemic. The President SHC Malta noted that the SHC had benefitted significantly from the wider SHC network through access to leadership, expertise and resources that helped keep the local hospitals as safe as possible during this unprecedent pandemic. Moreover, the SHC had closely corroborated with the responsible public authorities to ensure that all measures taken in Government's contingency planning process were in line with national direction and public health and infection control guidelines.

5.2.66 Elaborating on the COVID-19 preparedness measures, the President SHC Malta cited several initiatives undertaken with the health authorities. These included an escalation of surge plan measures according to predictive modelling; access restrictions, the safeguarding of vulnerable patients and the introduction of video-call conferencing for relatives; the curtailing of non-urgent services with patients supported remotely; infection control and public health guided policies and procedures to mitigate risk; staff training in infection control, personal protective equipment and specialised equipment; and staff support through remote or flexible working arrangements and the use of remote communication systems for staff working with COVID-19 patients.

5.2.67 Regarding infrastructure, changes were made to accommodate negative pressure and air exchange systems installed in all COVID-19 areas at the GGH and the KGRH. Also noted were the 25 high-end ventilators for patients needing intensive care and the additional personal protective equipment that was procured. At the GGH, 145 beds for COVID-19 care and a COVID ITU were set up. Moreover, seventy vulnerable patients were also relocated off-site to a facility that was re-fitted for this purpose. As regards the KGRH, an additional 28-bed ward for the care of COVID-19 patients was established, while another 28-bed ward was refitted for quarantine purposes for in-patients exposed to COVID-19 positive cases. A third ward for incoming patients from the MDH was set up to ensure containment and monitoring to minimize the risk of transmission to other patients and staff.

5.2.68 A breakdown of the additional costs incurred on COVID-19 initiatives as of June 2020 was also given by the President SHC Malta. These amounted to nearly €5,200,000 and reflected the changes and initiatives cited in the previous paragraphs. Of the total costs incurred, €3,900,000 related to the capital works required while €1,300,000 were expenses of an operational nature.

5.2.69 The President SHC Malta noted that, irrespective of the above achievements, the SHC would have been in a better position to plan and obtain the necessary supplies had the MFH involved it earlier in preparations for the pandemic, made worse by the fact that the SHC was left on its own to deal with COVID-19 after Government discarded the idea to have all COVID-19 patients treated at the MDH. According to the President SHC Malta, the SHC was not represented on the crisis board management set up by the Government to deal with the pandemic. Commenting further on Government's failure to involve the SHC in its address of the COVID-19 pandemic, the President SHC Malta stated that the SHC had to source its own personal protective equipment from the USA to avoid possible union action following the CPSU's decision not to provide the GGH and the KGRH with this equipment. The President SHC Malta also indicated that the SHC had to procure its own liquid oxygen reservoir for the GGH since the Government had only supplied the Hospital with small cylinder tanks that were insufficient for the demand generated by COVID-19.

5.2.70 An update was then given by the CEO GGH on the Hospital's activity levels which, overall, were deemed to have improved. According to the CEO GGH, the emergency services were coping better following the improvements made in the Department, while surgical activity was on the increase with elective surgery now also being carried out. It was agreed that the next step was to tackle waiting lists that had accumulated because of COVID-19. An update was then given on the staff who were to be recruited at the GGH's Emergency Department, including four senior medical officers, a consultant and a specialist. The President SHC Malta also informed the QAB that discussions were still ongoing with the MDH on the possibility of having specialists working on a shared model in rare-to-fill specialities, such as cardiology and radiology. It was also noted that a vacancy had arisen for a clinical director at the GGH.

5.2.71 An update was then given on the KGRH on the procedures being adopted with respect to COVID-19. In this regard, the CEO KGRH informed the Board that new referrals were being swabbed at the MDH a day prior to admittance. They were then admitted to the isolation ward for 14 days before they were assigned to a designated ward. The QAB was also informed of pending vacancies at the hospital, that for a radiographer and for two pharmacy technicians. A request was also put forward to have several long-term care beds allocated at the St Vincent de Paul Residence for KGRH patients as was being done for the MDH, thereby freeing beds for rehabilitation. As for other business, the Board was informed that a digital solution for equipment and maintenance was being installed at the KGRH, while three rehabilitation wards and the geriatric outpatients were being refurbished.

Meeting held on 29 January 2021

5.2.72 The QAB reconvened on 29 January 2021. Noted during the meeting was that the SHC had submitted Q3 2020 reports to the MFH for review and that the Q4 2020 reports were being compiled. Furthermore, budget matters, including the proposed capex items for Budget 2021, were briefly mentioned during the meeting, with the President SHC Malta proposing to provide supporting information in this regard. A separate meeting was to be convened in this respect.

5.2.73 Several aspects relating to KGRH operations were discussed by the QAB. In response to a query by the Consultant MFH about whether patient referrals from the MDH were being admitted to the hospital, the CEO KGRH indicated that patients were being admitted, albeit admissions were stopped or delayed whenever the hospital experienced a COVID-19 outbreak. Other concerns raised related to the installation of medical equipment, staffing shortages due to employees testing positive for COVID-19, and the delays in deployment of a resident radiographer at the KGRH. Also noted by the CEO KGRH was that four wards were refurbished in the past year and the physiotherapy department was renovated, while the occupational therapy section was currently being modernised.

5.2.74 During the meeting, the CEO GGH stated that the hospital's Emergency Department had been upgraded and extended. Patients with minor strokes were treated at the GGH, while those requiring intensive rehabilitation care were transferred to the KGRH or the MDH. The Consultant MFH highlighted that the GGH Emergency Department needed to be reinforced, and that the MDH's support was still necessary; however, acknowledged that this could be difficult in view of the prevailing circumstances. To cover shortages, the President SHC Malta proposed that several training positions at the GGH be included on the trainee roster.

5.2.75 Similar to previous meetings of the QAB, HR issues were brought to the fore. Noted was that the GGH had not had a clinical director for the past four months and that no call for this position had been issued. The Consultant MFH indicated that he would delve into the matter.

5.2.76 Other business discussed was the license of a premises that was being utilised as a residence for the elderly, which was to expire in April 2021. Despite that the renewal of this licence was required to avoid disrupting the GGH's capacity for attending to patients with COVID-19, there had been no response from the Ministry for Gozo or the MFH on the matter. The QAB believed extending the existing licence, albeit on a temporary basis, would address the matter.

Meeting held on 1 March 2021

5.2.77 The second meeting of the QAB in 2021 was held on 1 March. The President SHC Malta informed the Board that the performance reports for Q3 and Q4 2020 for the GGH and the KGRH had been submitted, which in turn triggered a lengthy discussion on the COVID-19 status in respect of the latter hospital. The CEO KGRH stated that there were significant challenges to the hospitals' day-to-day operations due to a significant proportion of staff being quarantined and patients being transferred from the MDH to KGRH being positive, as well as all MDH referrals being placed in quarantine, making the safe cohorting of the various groups the limiting factor in accepting admissions.

5.2.78 Another concern raised by the CEO KGRH concerned the hospital's reliance on the services of a radiographer provided by a home for the elderly despite that the matter had long been raised with the MFH. The CEO KGRH maintained that this interim solution exposed the hospital to risk.

5.2.79 Several updates relating to the GGH were then discussed by the QAB. Following enquiries by the Consultant MFH regarding the placement of medical students, the CEO GGH reported that students of the Barts Medical School had provided favourable feedback regarding their clinical placement at the hospital. The attention of the Board was then directed towards the issue of medical coverage at the GGH Emergency Department. The Consultant MFH indicated that there existed scope for better coordination between medical shifts. On the other hand, the CEO GGH acknowledged the utility of the support provided by foundation year doctors assigned to the hospital; however, noted that this measure came at a significant cost in terms of the coverage of accommodation and transport costs. Another matter discussed by the Board concerned the possible extension of services offered at the GGH. Of note to the NAO was that the Consultant MFH and the President SHC Malta resolved to meet with the chairs of different medical specialities to identify what new procedures and interventions could be offered at the GGH.

5.2.80 Other matters discussed during the QAB meeting were the approval of COVID-19-related expenses, the root cause analysis relating to an incident during a c-section at the GGH and progress registered in relation to the setting up of the Ethics Committee for the GGH.

Meeting held on 13 April 2021

5.2.81 The subsequent meeting of the QAB was held on 13 April 2021. Several updates were provided, namely relating to QMUL appointees, the appointment of a Clinical Director and the setting up of the Ethics Committee at the GGH, as well as the vacant radiographer post and the COVID-19 situation at the KGRH. In relation to the QMUL appointees, the Consultant MFH noted that the MAM maintained that appointees who were undertaking clinical work were to be provided with a locum appointment. While progress was registered at the GGH in terms of the constitution of its Ethics Committee, the CEO KGRH noted that the MFH had still not provided the radiographer requested by the hospital despite repeated reassurance that the matter would be resolved.

5.2.82 The main item discussed during this QAB meeting were the 2020 clinical performance reports for the GGH and the KGRH. With respect to the GGH, the report compared activity before and after the start of COVID-19 (2019/2020). While the minutes identified the performance criteria subject to comparison, no reference to the Board's possible evaluation of results achieved was made in the minutes.

5.2.83 As for the KGRH, noted were the main KPI results that had changed throughout 2020. The CEO KGRH highlighted:

a. a decrease in hospital occupancy rate due to discharges to nursing homes, a decrease of referrals from the MDH, referrals not being fit for transfer, quarantine needs, union directives, and the discharge rate in comparison to the admission rate;

b. the average length of stay (ALOS), whereby the main increase was registered in Q2 2020. Noted was that better patient selectivity and more staff input/therapy time were required to address this metric;

c. waiting times, influenced by variations in patient transfers due to the pandemic, union directives, a decrease in non-urgent physiotherapy appointments, and variations in orthotics due to the pandemic; and

d. patient satisfaction responses, which varied but had improved on the previous year.

5.2.84 The CEO KGRH elaborated on the performance registered and noted that there were indicators which were not dependent on COVID-19, where the hospital registered improvement, such as the decrease in pressure injuries, fall rates and acquired hospital infections. However, the CEO KGRH conceded that this could be attributable to smaller patient populations and, as a result, better staff-to-patient ratios.

Meeting held on 10 May 2021

5.2.85 The QAB next met on 10 May 2021. Similar to previous meetings, the Board was provided with updates regarding the COVID-19 situation at the GGH and the KGRH. In sum, the situation presented at both hospitals was one under control, with no positive cases detected, a significant vaccination uptake and regular admissions made. Nevertheless, the President SHC Malta referred to the request for nursing staff at the GGH, which request was still pending and bearing impact on several services provided by the hospital. Noted was that the nursing staff required were meant to be released from the MDH when the COVID-19 crisis was over.

5.2.86 The topic of pending recruitment was again raised by the QAB. The CEO KGRH noted that the MFH had still not made available a radiographer and a psychologist, with the hospital only having a part-timer in the case of the latter position. The Consultant MFH indicated that he would follow up on the matter with the Ministry. In addition, the CEO KGRH stated that several nurses had resigned from their employment with the SHC to work at the MDH or overseas, and that this would necessitate their replacement by the Government. A similar drain of resources from the SHC to the Government was anticipated by the CEO KGRH with respect to a call issued for occupational therapists. With respect to the GGH, and of note to the NAO, was that stated by the CEO GGH in reference to the serious problems in psychiatry at the hospital, noting that this function was mismanaged. In this context, the President SHC Malta indicated that only one psychiatrist was available at the GGH and that there was an urgent need for the engagement of another psychiatrist.

5.2.87 Several other matters were discussed by the Board, including personnel training, whereby the SHC offered to share the training plan in place, and the fact that the SHC wanted access to the MDH's Clinical Patient Administration System (CPAS). The Consultant MFH was to coordinate access through the CPSU. Another matter revisited by the QAB was the air ambulance hospital transfer protocol, which the President SHC Malta sought to streamline to ensure the continuous availability of anaesthetists at the GGH following transfers made. The Consultant MFH indicated that he would discuss the matter with the MDH.

Meeting held on 7 July 2021

5.2.88 Although the previous meeting held by the QAB indicated that the Board was to reconvene on 2 June 2021, the NAO was not provided with any records corresponding to the June meeting. Minutes made available indicate that the next meeting held by the QAB was on 7 July 2021. An update on the COVID-19 situation at the GGH and the KGRH was provided to the Board. The QAB was informed that there were no cases of COVID-19 at the hospitals and that both were running at pre-COVID-19 service levels.

5.2.89 The QAB followed up on matters previously discussed and addressed personnel training, access to the CPAS of the MDH, with respect to which feedback from the MFH was pending, and the air ambulance hospital transfer protocol. Regarding the latter, the Consultant MFH elaborated on efforts made to have a helipad in operation at the MDH yet expressed reservations on the likelihood of this happening. The Board was also updated on pending matters relating to critical recruitment, with progress registered on most issues.

5.2.90 In terms of other business, the first matter discussed by the QAB was the referral of KGRH patients to the MDH. The Consultant MFH noted that one third of KGRH patients were referred to the MDH for unplanned appointments. The CEO KGRH highlighted the most common reasons for such referrals, prompting the Consultant MFH to propose the possible introduction of a new service at the KGRH. The President SHC Malta indicated that the new service might necessitate having a visiting consultant at the hospital and proposed the way forward in actioning this item.

5.2.91 The attention of the QAB then shifted towards the Q1 2021 performance reports of the GGH and the KGRH. In the case of the former, the Consultant MFH remarked on the low uptake for the patient satisfaction survey and suggested ways through which this could be improved. The CEO GGH acknowledged that noise in the hospital environment remained an issue; however, indicated that an improvement had been registered when considering Q2 2021 results. According to the President SHC Malta, the performance of the GGH compared favourably with that of hospitals in the US.

5.2.92 Enquiring on other aspects of the GGH performance report for Q1 2021, the Consultant MFH requested further data on surgical site infections, on orthopaedic trauma and on mortality rates corresponding to elective and emergency surgeries. The Consultant MFH also enquired as to the facilities in place for dealing with psychiatric aggressive patients within the Emergency Department. The outpatient waiting lists of several clinics and services at the GGH were discussed, with follow-up action agreed in each instance.

5.2.93 With respect to the KGRH Q1 2021 performance reports, the Consultant MFH noted that the patient satisfaction survey response rate was very low and encouraged the CEO KGRH to explore measures that could improve this. Furthermore, the Consultant MFH highlighted that the ALOS for KGRH patients was getting longer and therefore sought that documentation be drawn up to better distinguish between patients requiring rehabilitation and long-term care. The CEO KGRH indicated that he was to meet the CEO St Vincent de Paule Residence to discuss the assignment of a specialist and patient admission criteria.

Meeting held on 4 August 2021

5.2.94 Following its meeting of 7 July 2021, the QAB next met on 4 August 2021. Several issues related to COVID-19 were discussed, with an update on the number of COVID-19 cases at the GGH and the KGRH provided, admittances to the MDH ITU noted, staff swabbing protocols considered, and the recall of ventilators acknowledged. Other matters, of a more general nature, revisited by the Board comprised the increase of the psychologist complement at the KGRH and the training of personnel. With respect to access to the MDH CPAS and the air ambulance hospital transfer protocol, the QAB indicated that it was to discuss these matters with the PS MFH, the CEO MDH and the CIO MFH.

5.2.95 The discussion then shifted on to the pending recruitment of a radiographer at the KGRH, a consultant psychiatrist at the GGH and the deployment of a few nurses at the KGRH. The QAB then raised the possibility of shared consultants between the MDH and the GGH, with the Board notified of the preliminary support expressed by the Clinical Chair of Surgery and the MAM. The CMO had also been involved in discussions on the matter. The QAB resolved that the President SHC Malta would request the CMO and the PS MFH to endorse that the vacant consultant post at the Emergency Department be on a shared consultant basis, as was the case with cardiology and orthopaedics. The CEO KGRH proposed that this model be utilised with respect to a consultant geriatrician for an outpatient clinic at this hospital.

5.2.96 The QAB was then provided with an update on the visit by the General Medical Council conducted in relation to the Barts Medical School. The School's representative on the Board noted that all had gone relatively well and indicated that all fourth-year students had passed their exams. Discussions were being held to engage students in the decision-making process at the hospitals. On a less positive note, the Barts Medical School representative noted that the Maltese language barrier remained the greatest concern.

5.2.97 Matters relating to KGRH were then discussed. In connection with the referral of KGRH patients to the MDH, concerns were raised as to why one-third of all admissions at the KGRH were re-admitted to the MDH. The CEO KGRH explained that such referrals primarily related to radiology tests that were not always available at the KGRH. Notwithstanding this, the CEO KGRH acknowledged that a smaller number of readmissions arose due to complex issues that could not be treated at the KGRH. As regards the patient satisfaction survey, the low response rate was highlighted by the Consultant MFH, prompting the CEO KGRH to acknowledge that staff would be taking a more proactive role to facilitate submissions by assisting patients. The Consultant MFH also raised concerns relating to the challenges faced by elderly patients with respect to non-Maltese speaking carers at the KGRH. To mitigate this, the Board highlighted the need for charge nurses to be cognisant of this matter to avoid misunderstandings arising from language and cultural issues. Finally, the QAB was informed that a standard procedure was being drafted to define the length of stay for the more common diagnostic groups of KGRH patients. This was to help identify the reasons for prolonged stays, which was important to ensure a more efficient use of beds.

5.2.98 Moving on to the GGH, the QAB was informed that the lengthy waiting times at the nephrology and endocrine clinics were not yet addressed; however, improvement was anticipated with respect to orthopaedic outpatients with the recruitment of a third consultant.

Meeting held on 1 September 2021

5.2.99 The next meeting of the QAB was held on 1 September 2021. A similar approach was adopted by the Board to that used in the preceding meeting, in that the QAB was briefed about the COVID-19 situation at the GGH and the KGRH, focusing on case numbers and vaccination-related issues. Also revisited were the MDH CPAS and the air ambulance hospital transfer protocol, which matters were subject to ongoing discussions with the MDH. However, in case of the latter, an interim solution involving the procurement of an ambulance service that would be on call in Malta was arrived at. The attention of the QAB then shifted onto HR-related matters, discussing the engagement of a psychologist and a radiographer at the KGRH, as well as a paediatric consultant, a geriatric consultant and other shared consultants at the GGH. In addition, the QAB explored services subject to possible increase in activity at the GGH, citing urology, ENT, paediatrics, breast care and imaging in this respect.

5.2.100 Regarding the Barts Medical School, its representative highlighted two concerns. First was that the registration of more students would create an issue in terms of the scheduling of training placements, which matter was further compounded by the overlap with placements made by the University of Malta. Second was that another UK-based university was offering online medical courses with clinical placements at the MDH.

5.2.101 The focus of the QAB then shifted towards the review of the Q2 2021 performance reports. In a series of comments in relation thereto, the Consultant MFH requested the GGH to submit additional information in relation to certain indicators, recommended the revision of procedures, noted progress registered for certain services and expressed concern about others. Of note to the NAO was that the Consultant MFH deemed failures in reporting of surgical site infections at the GGH as a matter warranting attention by the SHC.

5.2.102 With respect to the review of the Q2 2021 performance reports of the KGRH, the Consultant MFH reiterated concerns that referrals to the MDH remained high and sought more information about discharges and the cohorting of patients.

Meeting held on 15 October 2021

5.2.103 The ensuing meeting by the QAB, held on 15 October 2021, largely followed the same format as that preceding it. The Board was informed of matters relating to COVID-19 at the GGH and the KGRH, with an update of the number of positive cases and vaccination rollout among staff and patients highlighted. The QAB was informed that the licence of the premises housing elderly patients previously accommodated at the GGH was extended until end 2021, after which all patients would return to the hospital. In terms of access to the MDH's CPAS, the GGH was to assist the KGRH with use of this system, while limited progress relating to the air ambulance hospital transfer protocol was registered as the SHC awaited quotes for the service to be procured. The QAB was provided with updates on the various recruitment initiatives underway, with reference made to the psychologist and radiographer to be engaged by the KGRH, as well as the psychiatric, the paediatric and the geriatric consultants at the GGH. While the principle of having shared consultants between the MDH and the GGH was endorsed, the Board noted that further approvals were required. In addition, the QAB was notified that the final report of the General Medical Council relating to the Barts Medical School was being finalised, and that actions connected to the Q2 2021 performance reports reviewed in the previous meeting were in progress. Furthermore, the Board noted that it was unlikely for there to be an increase in activity for urology, paediatric surgery and ENT, and that the introduction of measures to address no shows at outpatient clinics at the GGH be considered.

5.2.104 The QAB then discussed matters relating to the KGRH. The Board delved into the quality of service at the OPU, with reference made to the management and address of complaints received in relation thereto. The President SHC Malta informed the QAB that the introduction of an IT system to track services provided by the OPU was underway and testing to commence shortly. In connection therewith, albeit hospitals-wide, were enquiries made by the Consultant MFH regarding the customer satisfaction questionnaire. The President SHC Malta indicated that the questionnaire had been redesigned for all outpatient settings and was to be rolled out in a few weeks.

5.2.105 Another KGRH-related matter concerned special leave availed of by physiotherapists, the extent of which was resulting in an increase in waiting times. The CEO KGRH presented data of the hours lost to special leave in physiotherapy services between the months of January and August 2021. The Consultant MFH advised that the Government is made aware of the associated costs and the need to supply other physiotherapists to provide cover.

5.2.106 As regards the GGH, the QAB discussed the proposal made by the MFH regarding the appointment of a Clinical Chair for the hospital. The President SHC Malta disagreed with that proposed by the Ministry and indicated the GGH's need for a Clinical Director as was the case with the MDH. She maintained that the GGH's lack of clinical structure and back up and the specific challenges pertinent to the hospital were even more reason in support of such a role.

Meeting held on 3 November 2021

5.2.107 The penultimate meeting of the QAB in 2021 was held on 3 November. An update on the COVID-19 situation at the GGH and the KGRH was then provided, wherein it was noted that no positive cases were registered at the hospitals. Elaborating on COVID-19-related matters, the President SHC Malta informed the Board that minor refurbishment works were carried out to allow for the return of the elderly patients housed at alternative premises outside the hospital to the GGH. The return of these patients necessitated that another area within the GGH be designated for the accommodation of COVID-19 patients. In correspondence submitted by the COO SHC to the PS MFH shortly after the QAB meeting, the Ministry was informed that the cost of this arrangement was €250,000. Updates on several matters previously discussed by the Board were also provided. While agreement with the selected third-party service provider concluded the interim solution identified with respect to the air ambulance hospital transfer protocol, the matter concerning access to the MDH's CPAS remained a work in progress. Recruitment-related issues were also revisited, with the KGRH seeking a solution regarding the supervision of assistant psychologists and exploring a system for the deployment of radiographers. Regarding recruitment at the GGH, an element of frustration was expressed in relation to the delays experienced in the clearance required for resort to shared consultants, while the possibility of engaging a geriatric consultant was discussed. Progress was registered in relation to the call issued for a paediatric consultant.

5.2.108 The QAB then discussed matters relating to the OPU. The Board was informed that the new IT system was near completion and was undergoing user acceptance testing. When concluded, data migration and training were to follow for the system to go live. As regards delays in the provision of orthotic devices highlighted by the Consultant MFH, the President SHC Malta attributed this to Brexit, which impacted deliveries from the UK. An alternative supplier within the EU was sought to mitigate this situation.

5.2.109 In amendments subsequently made to the minutes of this meeting, the Consultant MFH referred to the repeated reports received on the excessive delays of orthotic devices, noting that patients were contacting their parliamentary representatives to complain on the matter. The Consultant MFH asserted that delivery times were to be significantly shortened to avoid patients incurring further injuries. In the circumstances, the Government would have to declare a perceived breach of contract.

5.2.110 The meeting of the QAB was brought to a close with the Board discussing action to be taken following a patient's complaint and possible courses of action in respect of a foreign national undergoing rehabilitation at the KGRH, in respect of which the advice of the CMO was to be sought.

Meeting held on 1 December 2021

5.2.111 The final meeting of the QAB reviewed by the NAO was that held on 1 December 2021. Although the Board continued to meet thereafter, this Office set end 2021 as the cut-off for its review. The NAO noted that the minutes made available with respect to this meeting were incomplete.

5.2.112 The QAB was provided with an update on the COVID-19 situation prevailing at the GGH and the KGRH. The Board was informed that a case at each hospital had been detected at the time of the meeting and was provided with an update on vaccination rates among staff. Of note was that the Consultant MFH commended both hospitals for the work undertaken during the pandemic. The CEO GGH noted that there had been no COVID-19 cases among the elderly patients housed at the alternative premises outside the hospital; however, it was noted that the licence of the premises was to be extended till March 2022.

5.2.113 Several other matters were discussed by the QAB, with the NAO's attention drawn to the update provided in respect of the OPU. The Consultant MFH acknowledged the progress registered by the SHC in addressing problems at the Unit, while the President SHC Malta highlighted the utility of the new IT system in tracking the quality of service provided. Also recorded in the minutes of the QAB was the reconvening of the HMC, which Committee was to be chaired by the PS MFH. Updates on the several recruitment initiatives underway were provided to the Board as were developments registered with respect to the foreign nationals undergoing rehabilitation at the KGRH.

5.2.114 The focus of the QAB then shifted onto the Q3 2021 performance reports. Regarding the GGH, the Consultant MFH noted several improvements registered, citing the positive results in the customer satisfaction survey, the outcome of the hand hygiene audit, and the fact that there were no deaths after elective surgery. Also indicated was the increase in activity registered at the Emergency Department; however, less positive was the self-discharge rate, with approximately 10 per cent of persons who register at the Department leaving before they are seen. Other points raised by the Consultant MFH in relation to the Q3 2021 GGH performance report concerned the need to include additional information, mainly relating to helicopter downtime, surgical site infection rates, the categorisation of surgeries and patients assessed for rehabilitation.

5.2.115 As regards the Q3 2021 performance report corresponding to the KGRH, the Consultant MFH noted that positive results were achieved in terms of a reduction in infection rates and that no deaths occurred following hip replacement. The Consultant MFH attributed this to the effective rehabilitation and good care provided at the KGRH. Further information was sought regarding other aspects of performance captured in the report, namely in relation to readmission rates and discharge rates to the MDH, and referrals from the MDH to the KGRH that were refused admission. An element of concern was expressed by the Consultant MFH as there were no post-surgery admissions recorded in the report.

5.3 Quality Performance Reports

5.3.1 Stipulated in the HSDA was that until the completion date, the Concessionaire was to, at all times, maintain the current level of beds and services at the GGH and the KGRH. Integral in ascertaining that these requirements were being met were the periodical reports drawn up by the hospitals capturing the diverse metrics against which service levels and quality were gauged. The NAO reviewed the quarterly reports submitted by the GGH and the KGRH for the period commencing in Q1 2018 and ending in Q4 2021.

5.3.2 A point of note raised by the PS MFH related to the obligation of the SHC to maintain existing service levels. The PS MFH indicated that the service provided prior to the concession was not necessarily optimal and therefore retaining this standard of service during the transition period was not desirable. The MFH argued that efforts to address such situations were made, duly captured in the quarterly performance reports submitted by the SHC to the Government.

Gozo General Hospital – Quality Performance Reports

5.3.3 In the GGH Quality Performance Report for Q1 2018, reference was made to the several indicators selected that were to enable the monitoring of performance and identification of potential areas for improvement. Noted was that these indicators were developed following consultation with a wide range of stakeholders and were categorised in two, that is, core KPIs and other KPIs, with the latter comprising indicators relating to diagnosis, procedure and department or speciality. For the purposes of this review, the NAO focused on the core KPIs.

5.3.4 In the Q1 2018 report, a set of 19 core KPIs were identified by the GGH to gauge the three aspects of quality, namely clinical effectiveness, patient safety and experience. These KPIs were revised in 2019, with minor changes made in 2021, to allow for the analysis of data that was further disaggregated. The 19 core KPIs were reorganised into 9 major indicators (Figure 17 refers). These indicators corresponded to 77 sub-indicators, all of which captured some element of the performance activity of the GGH.

Figure 17 | GGH: Major indicators of performance as revised in 2019 and 2021

Major indicators of performance	
Clinical effectiveness	• Readmission rates • Average length of stay • Newborns • Joint replacement • Stroke care
Patient safety	• Infection control and harm-free care • Hospital incidents and events reported
Patient experience	• Hospital complaints • Patient satisfaction survey

5.3.5 Several gaps in data were noted during the period under review. An element of these gaps could be attributed to the fact that 2018 represented the first year within which data pertaining to the KPIs was recorded. This led to the situation where developments and refinement of the data collection methodology necessitated changes in the performance reporting framework, most evident in 2019 revisions. Other gaps arose following the introduction of new KPIs for which data was not previously collected. Finally, the NAO was not provided with the performance activity report corresponding to Q4 2018, which prohibited this Office from establishing a comprehensive view of the yearly performance registered.

5.3.6 Acknowledged in the GGH's performance activity reports were several limitations to be taken into account when considering the analysis put forward therein. Key in this respect were concerns relating to the validity of data, with information analysed as inputted by the users, and reliability issues emanating from missing, lost or inaccurate data. Also highlighted were limitations arising from the system design, which created scope for significant error with limited control functionality. Another limitation noted was that concerning the data analysis methods used, which were not automated and therefore created the possibility of manual error. One other overarching consideration was the small numbers that were generally reported by the GGH, which at times gave rise to anomalous results.

Clinical effectiveness

5.3.7 Several indicators were established by the GGH to measure clinical effectiveness. Some were generic in nature, such as hospital readmission rates and ALOS, while others were related to specific health services, such as joint replacement and stroke care.

5.3.8 The backdrop to the period of reporting was undoubtedly characterised by the hospital's efforts at preparing for and responding to the COVID-19 pandemic. This resulted in a considerable decrease in hospital activity being registered by the GGH in Q2 2020, with the curtailment of most of the ancillary and diagnostic services, and the halting of all elective non-urgent procedures to free up acute care capacity and help keep transmission as low as possible. However, these measures inevitably resulted in the creation of a backlog of health issues that the GGH was to address in the pandemic's wake. In Q2 2020, demand was suppressed as more patients were reluctant to go to hospital, while routine general practitioner referrals dropped by over 60 per cent. These trends prompted the GGH to explore how to restore and recover services as promptly as possible, while continuing to mitigate the spread of the virus.

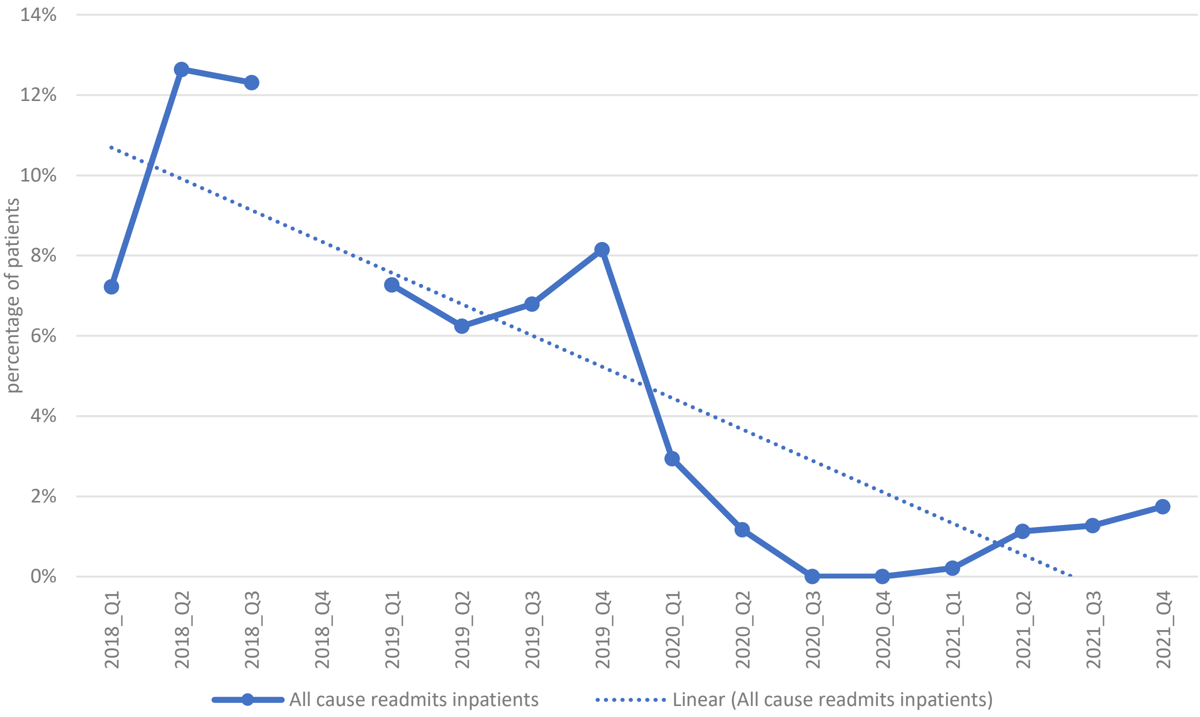
5.3.9 Signs of improvement were noted in Q3 2020, with the hospital engaged in a recovery plan so that services put on hold could resume, with screening and day surgeries foremost among which. For recovery to be possible, the GGH introduced several measures, including infection-control protocols to minimise the risk of transmission, the cohorting of patients, and alterations to health setting to maintain physical distancing. The hospital also established contingency mechanisms to allow for the quick redistribution of resources in the event of future surges in COVID-19 cases, building slack capacity into plans to enable adjustment according to demand. The measures and mechanisms introduced by the GGH to mitigate the effects of the pandemic proved successful, for in Q4 2020, the overall activity of the hospital returned to pre-pandemic levels in most services offered.

Readmission rates

5.3.10 An indicator that shed light on the clinical effectiveness of health services provided at the GGH was the rate of readmission. For a readmission to be considered as such, the recurring episode was to be an emergency case occurring within 30 days from discharge. Several exclusionary criteria applied, including hospital stays exceeding 30 days, follow-up visits and patients discharged at their own request.

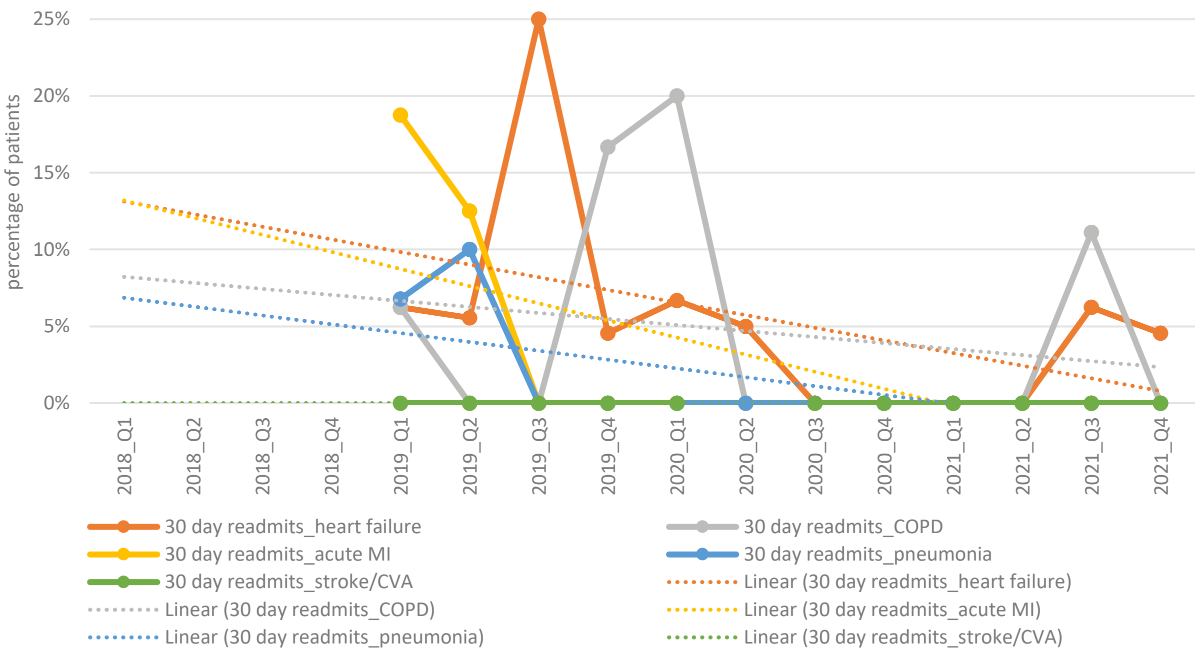
5.3.11 The overall trend that emerged when considering all readmissions to the GGH between 2018 and 2021 was one of decrease, with a high of 12.6 per cent registered in Q2 2018 to no readmissions in Q3 and Q4 2020 (Figure 18 refers). Although a steep decline in readmissions was noted from 2020 onwards, coinciding with the onset of the COVID-19 pandemic, the rate gradually increased to under two per cent by end 2021.

Figure 18 | All readmissions to GGH, 2018-2021



5.3.12 A similar trend was logically seen in the readmission rates disaggregated by specialisation over the same period (Figure 19 refers). Although overall, the rate of readmission for all specialisations decreased, the NAO noted spikes in readmissions relating to heart failure in Q3 2019 and chronic obstructive pulmonary disease in Q4 2019 and Q1 2020. The significant gaps in data prohibited this Office from further comment in this regard.

Figure 19 | Readmission to the GGH by specialisation, 2018-2021

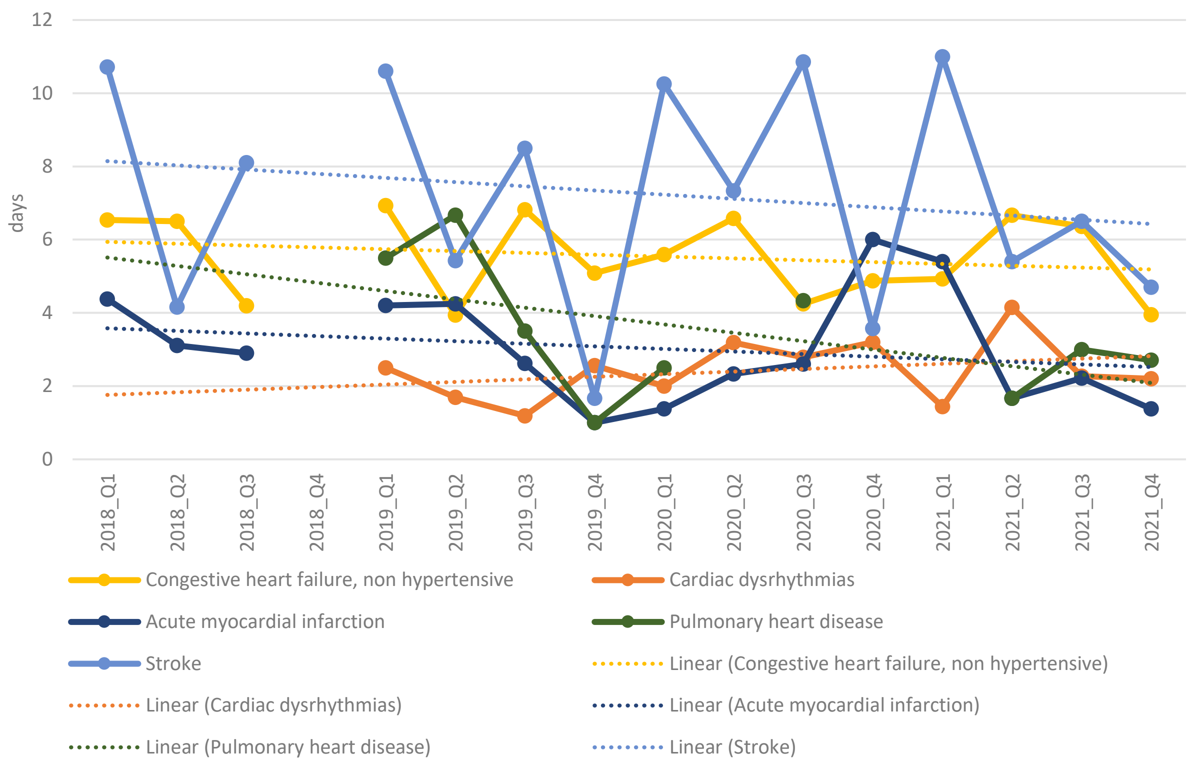


Average length of stay

5.3.13 Another metric indicative of clinical effectiveness was the ALOS. The GGH recorded the ALOS by capturing the date of primary diagnosis and the discharge date. Nonetheless, in determining the ALOS, certain cases were eliminated, such as length of stay periods exceeding 30 days, patients discharged at their own request and episodes deemed as day cases where the length of stay was less than one day.

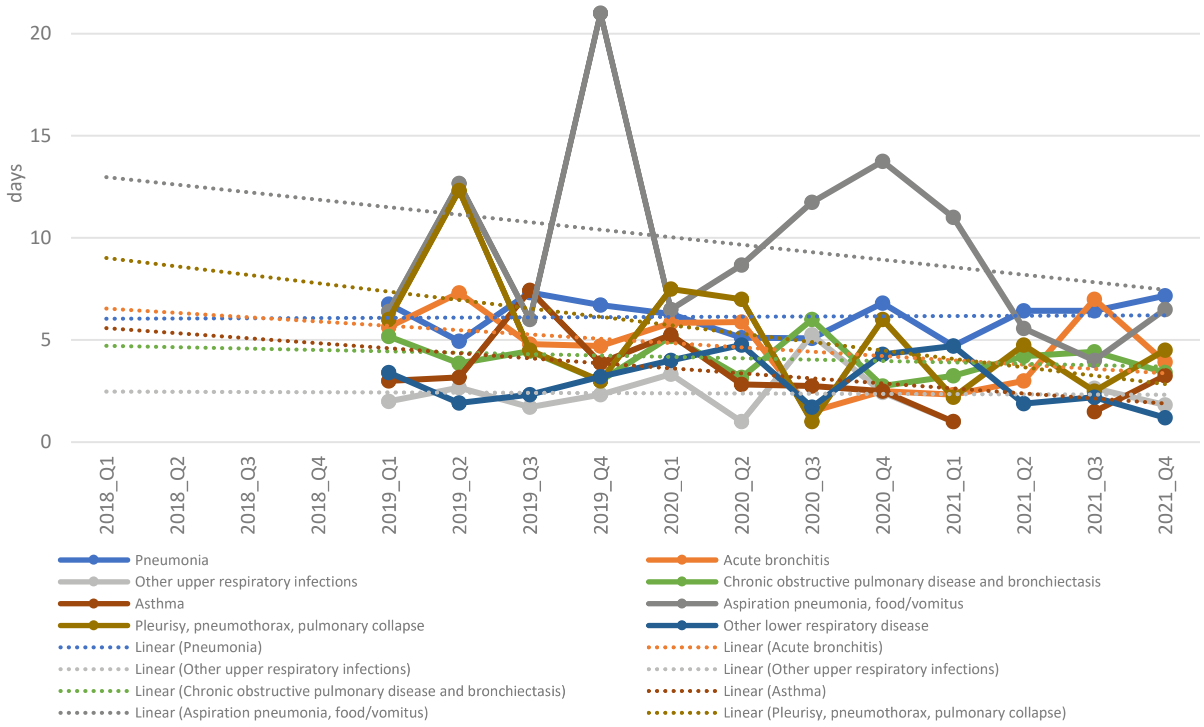
5.3.14 Over the period reviewed, the NAO noted that the ALOS of patients with cardiac health conditions decreased over time (Figure 20 refers). The composite average ALOS for congestive heart failure, acute myocardial infarction, cardiac dysrhythmias and pulmonary heart disease was 4.6 days in 2018, 3.7 days in 2019, 3.9 days in 2020 and 3.6 days in 2021. An exception to the general downward trend noted in terms of ALOS was with respect to stroke patients, with stays averaging 7.7 days in 2018, 6.6 days in 2019, 8.0 days in 2020 and 6.9 days in 2021. This resulted in an upward, albeit marginal, trend.

Figure 20 | GGH ALOS: Cardiac and stroke patients, 2018-2021



5.3.15 A downward trend was also registered by the GGH in terms of the ALOS for patients with respiratory conditions (Figure 21 refers). When considering pneumonia, upper respiratory infections, asthma, pleurisy, pneumothorax, pulmonary collapse, acute bronchitis, chronic obstructive pulmonary disease, bronchiectasis, aspiration pneumonia, food/vomitus and other lower respiratory disease, the composite ALOS for 2019 was of 5.4 days, down to 5.0 days in 2020 and again to 3.8 days in 2021.

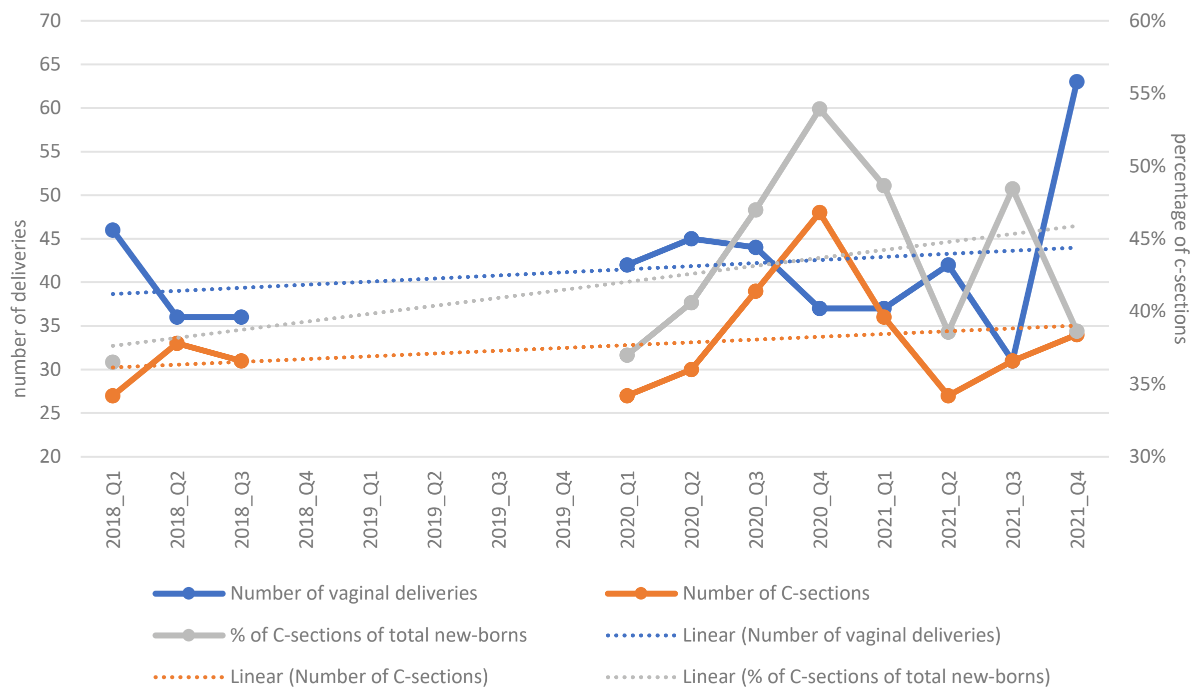
Figure 21 | GGH ALOS: Patients with respiratory conditions, 2018-2021



Newborns

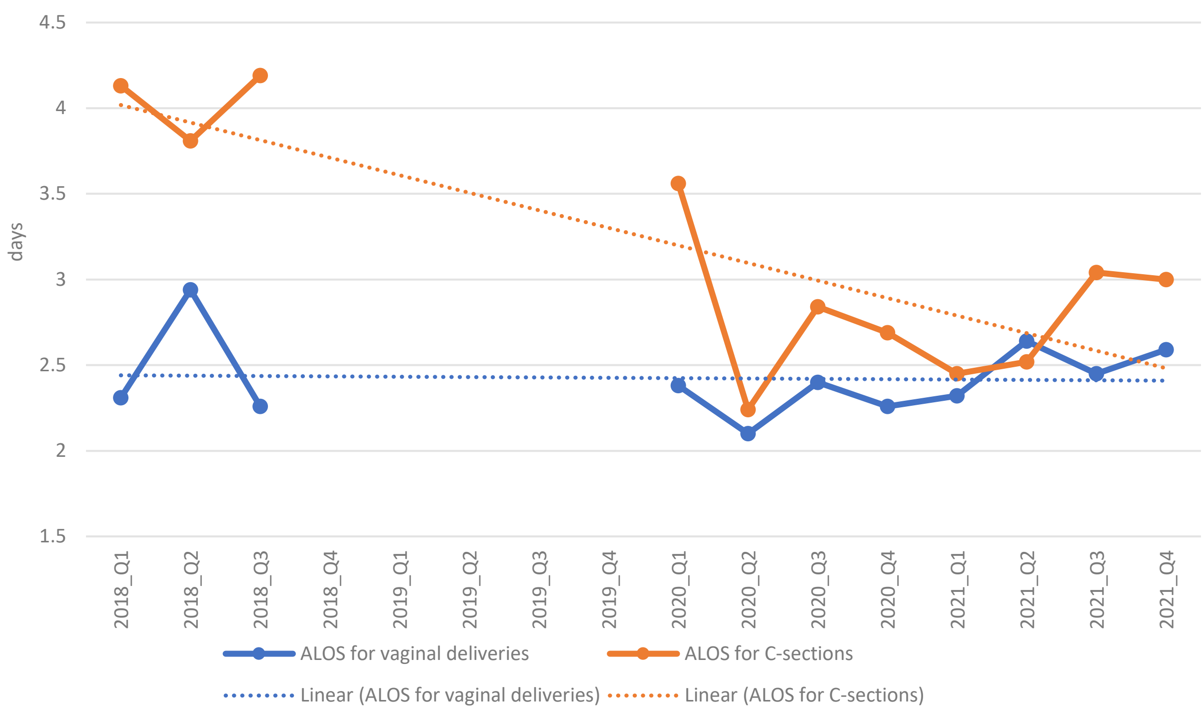
5.3.16 The performance indicators measuring the extent of activity undertaken by the GGH in connection with the delivery of newborns provided positive results. Between 2018 and 2021, the number of vaginal deliveries and c-sections increased, from a combined average of 34.8 deliveries in 2018 to 39.0 in 2020 and 37.6 in 2021 (Figure 22 refers). Although the trend corresponding to the percentage of newborns born by c-section increased over the period reviewed, the multiple gaps in data limited the NAO from commenting in this regard.

Figure 22 | GGH newborn deliveries, 2018-2021



5.3.17 Of note was the significant decrease in ALOS for c-section deliveries, down from an average 4.0 days in 2018 to 2.8 days in 2020 and 2021 (Figure 23 refers). Although gaps in data for 2019 prohibited this Office from establishing a comprehensive account of this change, it is pertinent to note that this decrease coincided with the onset of the COVID-19 pandemic. During the same period, the ALOS for vaginal deliveries remained constant.

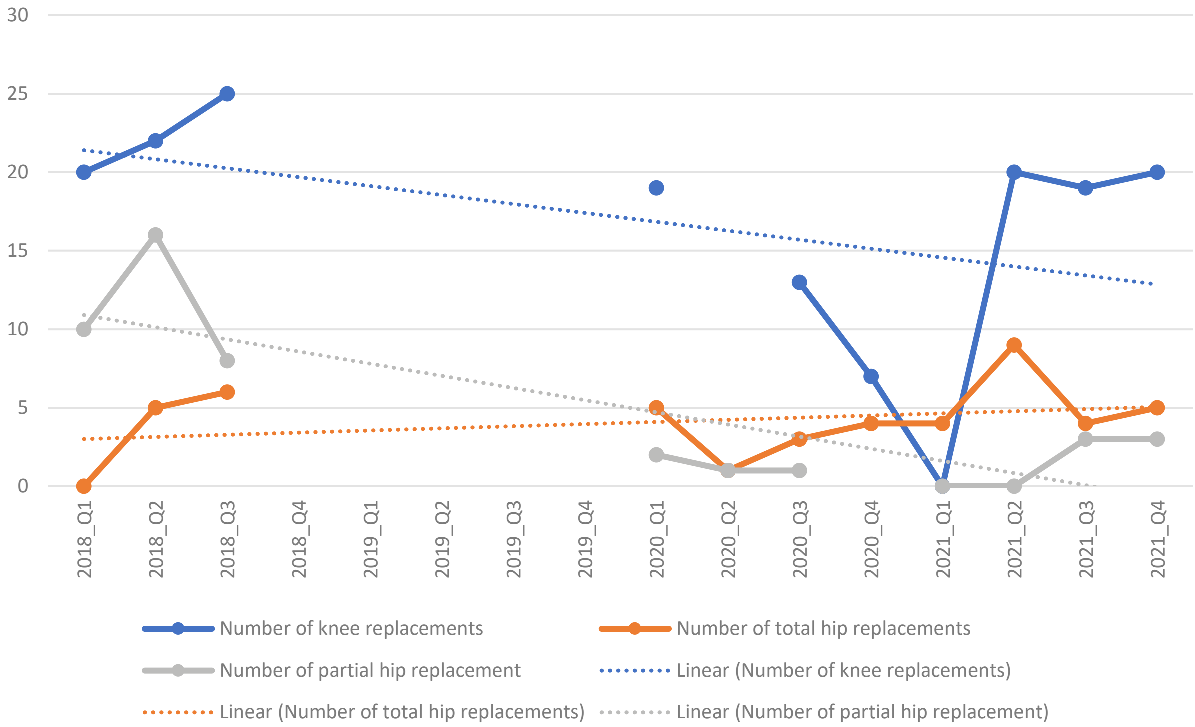
Figure 23 | GGH ALOS: Newborn deliveries, 2018-2021



Joint replacement

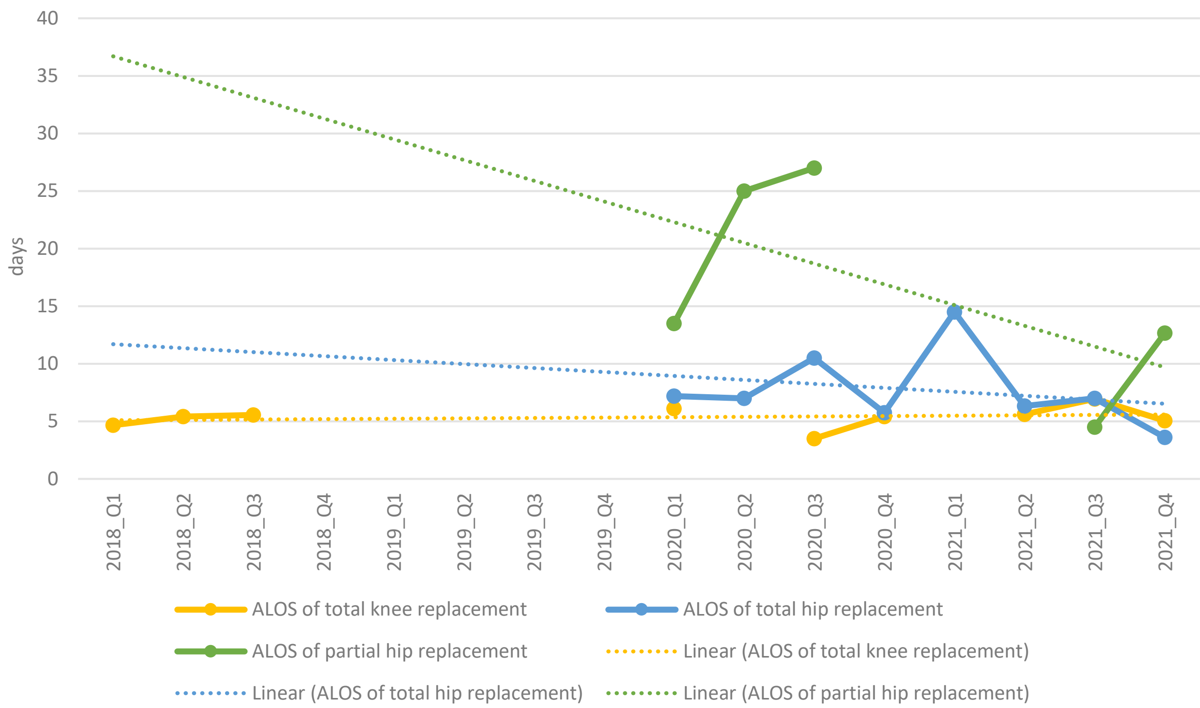
5.3.18 When considering joint replacements by the GGH, mixed results were registered in the period 2018 to 2021 (Figure 24 refers). While the trend with respect to knee replacement and partial hip replacement was one of decline, that corresponding to total hip replacement increased, albeit marginally. Although gaps in the data did not allow for comprehensive reporting, the average number of knee replacements for 2018, 2020 and 2021 was 22.3, 13.0 and 14.8, respectively. For total hip replacements, the average number of interventions varied from 3.7, 3.3 and 5.5, in 2018, 2020 and 2021, respectively. In terms of partial hip replacement, the average number of surgeries was 11.3, 1.3 and 1.5 in 2018, 2020 and 2021, respectively.

Figure 24 | GGH joint replacement, 2018-2021



5.3.19 The notable gaps in data relating to the ALOS for joint replacements at the GGH limited the NAO from establishing a comprehensive understanding of progress registered or otherwise in terms of this metric (Figure 25 refers). Notwithstanding this, the ALOS for total hip replacement declined between 2020 and 2021, while a sharper decrease was noted for partial hip replacement; however, the sporadic data available in this respect must be taken into account. The ALOS for total knee replacement remained stable throughout the period under review.

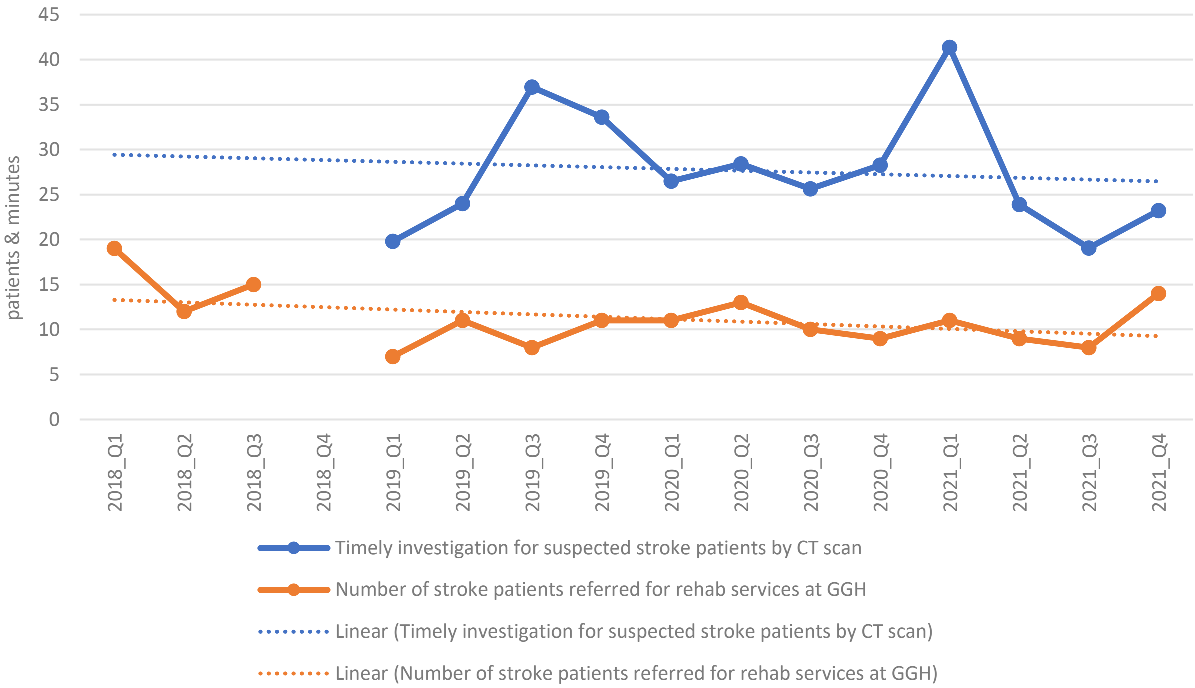
Figure 25 | GGH ALOS: Joint replacement, 2018-2021



Stroke care

5.3.20 The final aspect of clinical effectiveness captured as part of the GGH's reporting on its performance was that related to stroke care (Figure 26 refers). When considering the timely investigation of suspected stroke patients by computerised tomography and the number of patients referred for rehabilitation, the overall trend was a slight decline. With regard to the former, positive results were registered, with the duration for referral decreasing from 28.6 minutes to 27.2 minutes and 26.9 minutes in 2019, 2020 and 2021, respectively. On the other hand, the number of referrals for rehabilitation decreased from 15.3, to 9.3, 10.8 and 10.5 in 2018, 2019, 2020 and 2021, respectively.

Figure 26 | Stroke patient care at the GGH, 2018-2021



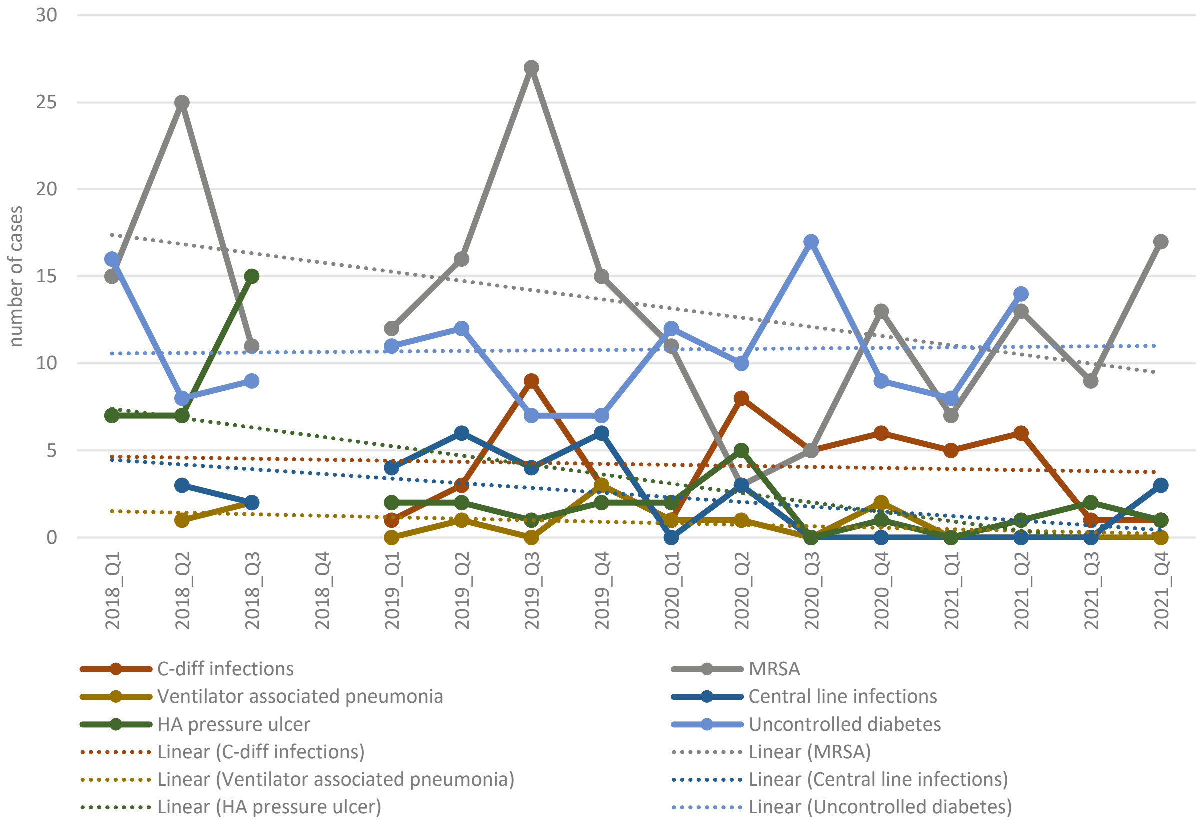
Patient safety

5.3.21 Another dimension of performance measured by the GGH to gauge the quality of its service related to patient safety. The two key indicators established in this respect were infection control and harm-free care, and hospital incident and event reporting.

Infection control and harm-free care

5.3.22 Performance in terms of infection control was monitored through several sub-indicators which, over the period reviewed, registered a decrease in the number of reported instances (Figure 27 refers). The sub-indicators considered by the GGH in this respect comprised C.Diff, ventilator associated pneumonia, hospital-acquired pressure ulcers, MRSA, central line infections and uncontrolled diabetes. The only sub-indicator for which an increase was registered was the latter. With respect to the MRSA, despite the trend indicating a decrease in the number of cases registered, the NAO noted the spike in cases that occurred in Q2 2018 (25 cases) and Q3 2019 (27 cases).

Figure 27 | Infection control and harm-free care indicators at the GGH, 2018-2021



5.3.23 The low level of reporting by the GGH staff was highlighted as an issue of concern in several of the quality performance reports reviewed by the NAO. Evident were the efforts being undertaken by the hospital to encourage staff to disclose such events for services to be improved. The sub-indicators considered by the GGH in its assessment of harm-free care were measures related to surgical site infection, ITU venous thromboembolism prophylaxis, falls with or without injury, transfusion reactions and hand hygiene. While the notable gaps in data precluded the NAO from understanding the level of performance of the GGH in this regard, other indicators for which data was available presented a positive outlook. This was the case for falls with or without injury and transfusion reactions (Figure 28 refers) and hand hygiene (Figure 29 refers).

Figure 28 | Falls with or without injury and transfusion reactions at the GGH, 2018-2021

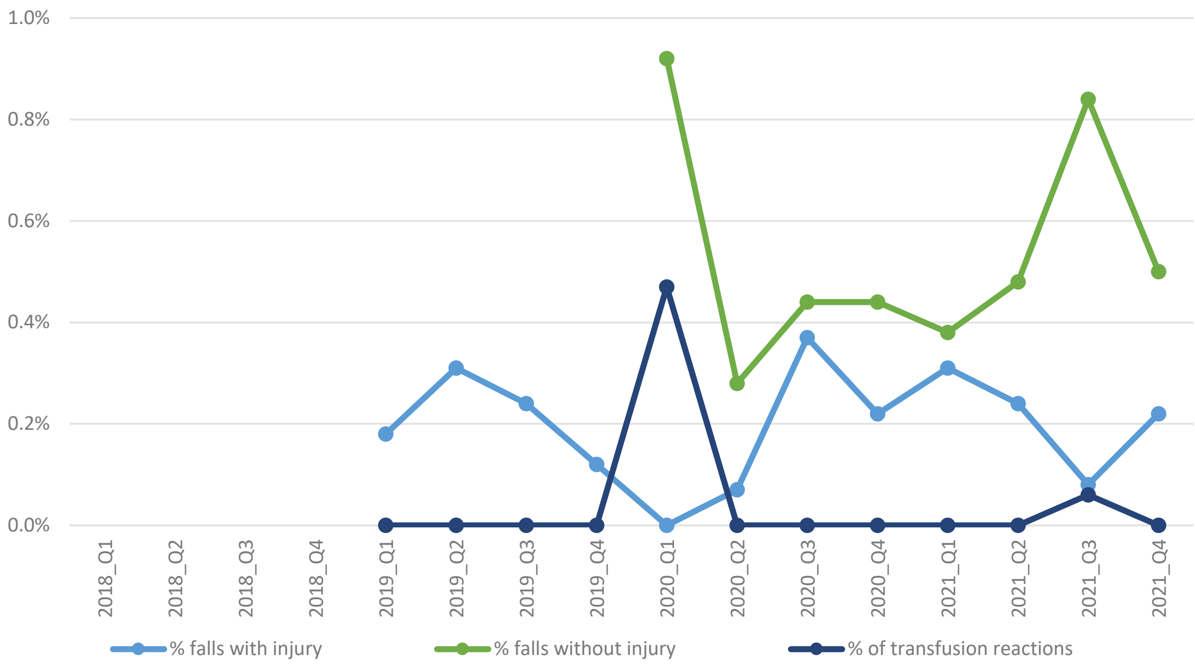
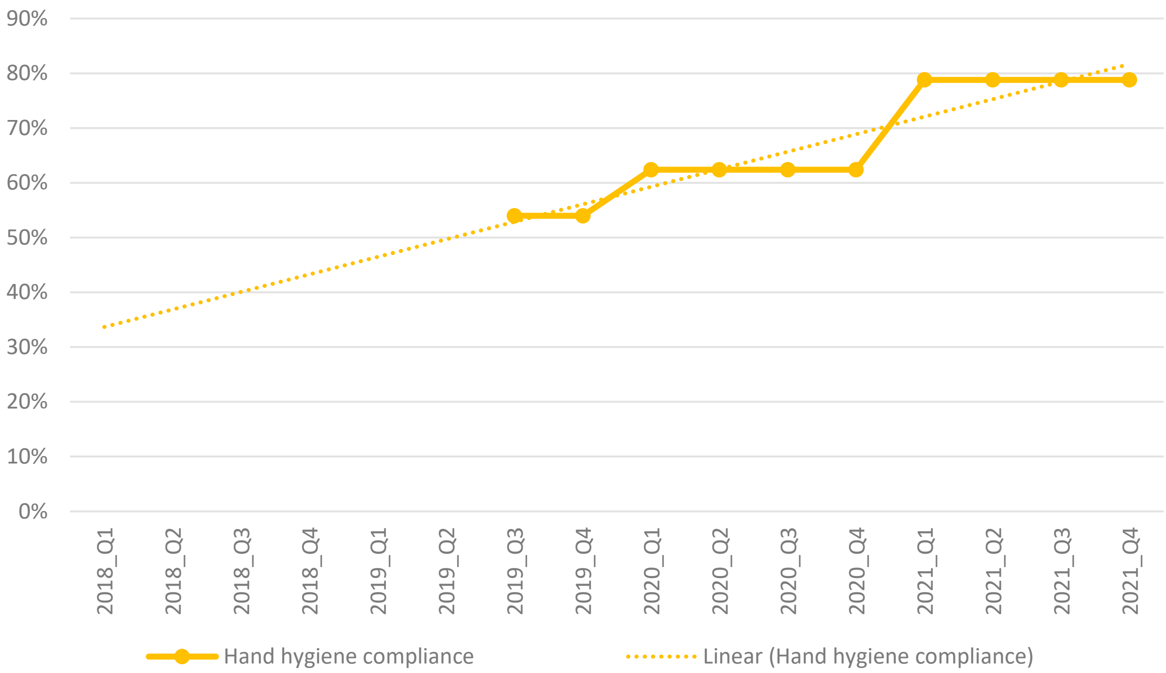


Figure 29 | Hand hygiene compliance at the GGH, 2018-2021



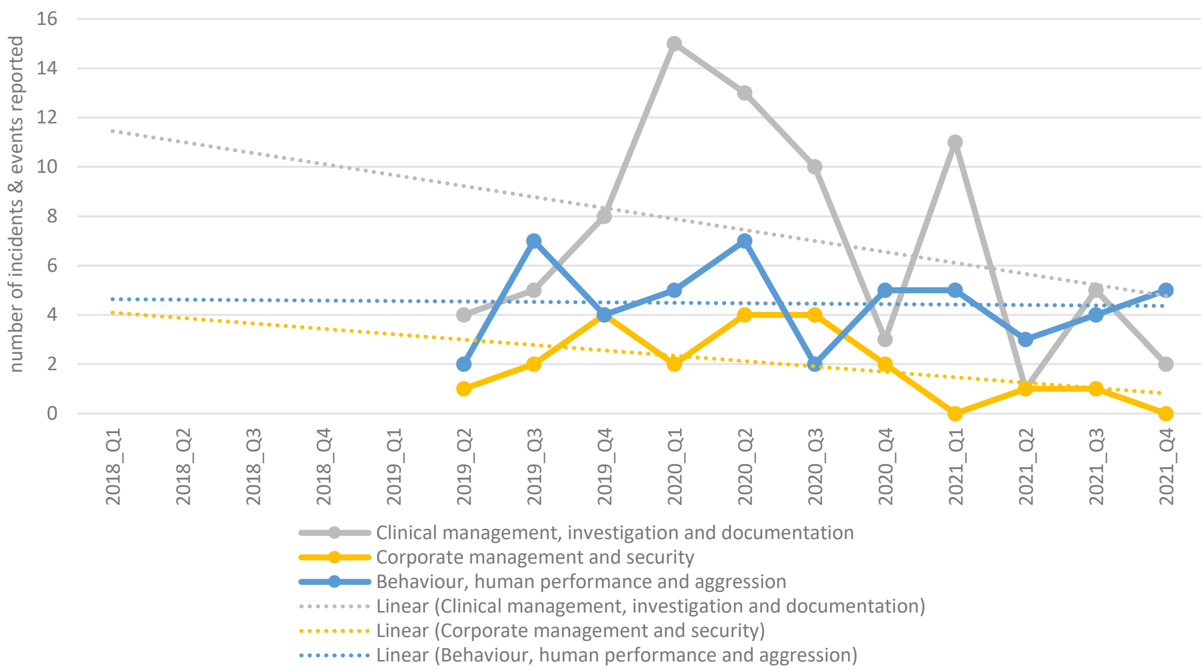
Hospital incidents and events reported

5.3.24 Another aspect of patient safety gauged in the GGH quarterly reports related to the reporting of hospital incidents and events. These occurrences related to any incident, accident, or potential incident that caused or had the potential to cause any form of harm, loss or damage to any individual involved or damage in respect of hospital premises. Such incidents and events were classified and measured according to the potential sources of harm, namely: equipment and infrastructure; physical harm and occupational health and safety; clinical management, investigation and documentation; corporate management and security; behaviour, human performance and aggression; therapeutic agents; and specialty incident types. While the reporting on hospital incidents and events in terms of most of the sub-criteria commenced in Q2 2019, that corresponding to the latter two was initiated later and therefore was excluded from the NAO's analysis.

5.3.25 Of note to the NAO were comments by the GGH whereby it was acknowledged that the reporting of incidents at the hospital was very low throughout 2018. However, by Q3 2019, the GGH maintained that the under-reporting noted in previous quarters was partly addressed through procedures introduced for the registration, analysis and instigation of corrective action when necessary.

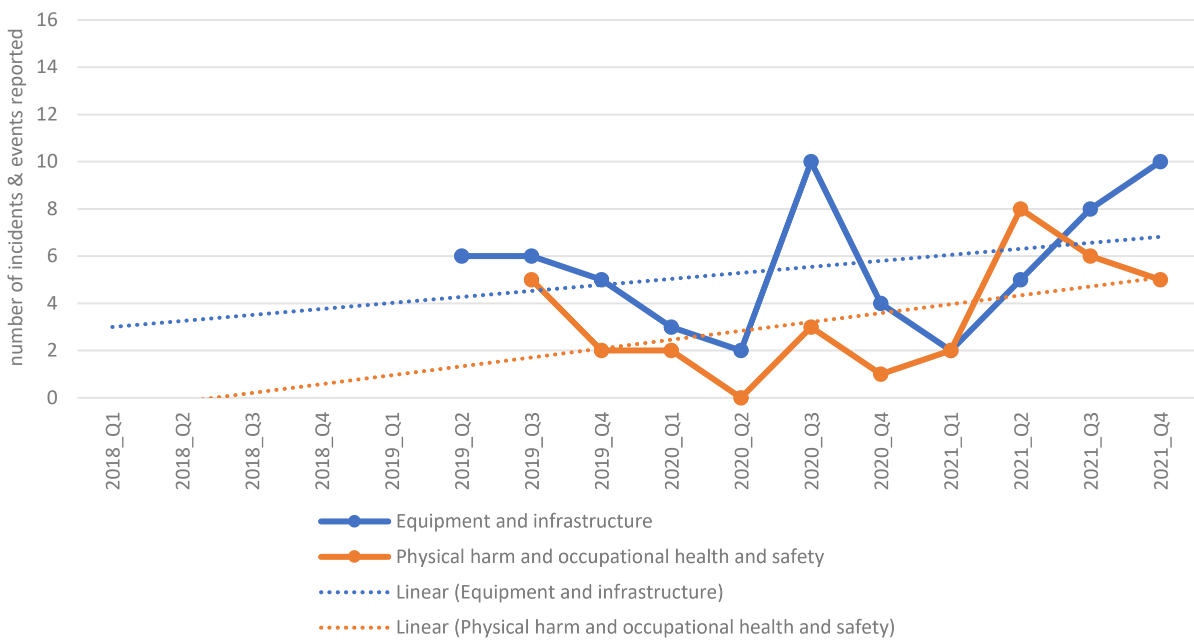
5.3.26 Evident in Figure 30 was that the number of certain types of hospital incidents and events reported decreased between Q2 2019 and Q4 2021. Significant decreases were noted in relation to incidents and events concerning clinical management, investigation and documentation, and corporate management and security. A marginal improvement was also noted with respect to incidents and events classified as behaviour, human performance and aggression related.

Figure 30 | GGH decrease in hospital incidents and events reported, 2018-2021



5.3.27 On the other hand, an increase in the number of hospital incidents and events reported was noted in relation to matters concerning equipment and infrastructure, and physical harm and occupational health and safety (Figure 31 refers).

Figure 31 | GGH increase in hospital incidents and events reported, 2018-2021



Patient experience

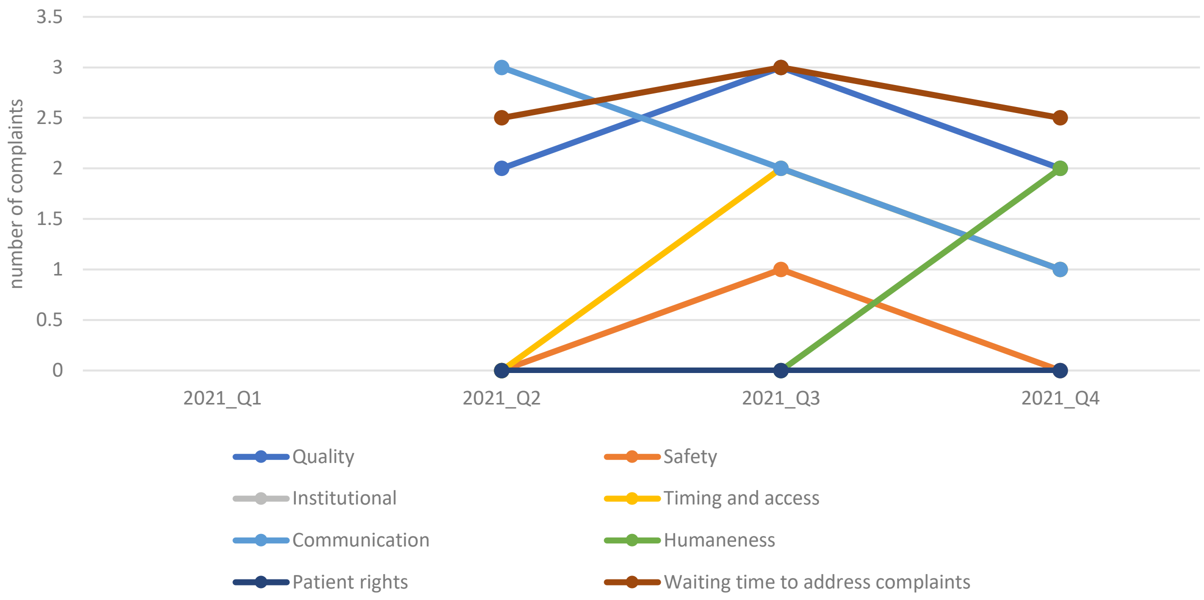
5.3.28 The third dimension utilised by the GGH as an indicator of its quality of care focused on the patients' experience of services provided. The GGH sought to elicit information in this regard through two mechanisms, that is, by means of a system of complaints submitted by patients and a survey measuring patient satisfaction.

Hospital complaints

5.3.29 Acknowledged in the GGH quality performance report for 2021 was that patient complaints provided a valuable source of insight into safety and operational-related problems within healthcare organisations. The GGH developed a tri-level system of complaint coding, distinguishing among the domains of 'clinical', 'management' and 'relationship' for analysing patient complaints. The 'clinical' domain pertained to patient reports on poor quality care and safety issues. On the other hand, the 'management' domain related to problems in waiting times, access to care and institutional management. Finally, the 'relationship' domain considered patient complaints on interactions and experiences of healthcare professionals.

5.3.30 Measurement of this metric commenced in Q2 2021 (Figure 32 refers) and therefore data available was limited and precluded the NAO from further comment.

Figure 32 | GGH patient complaints, 2021

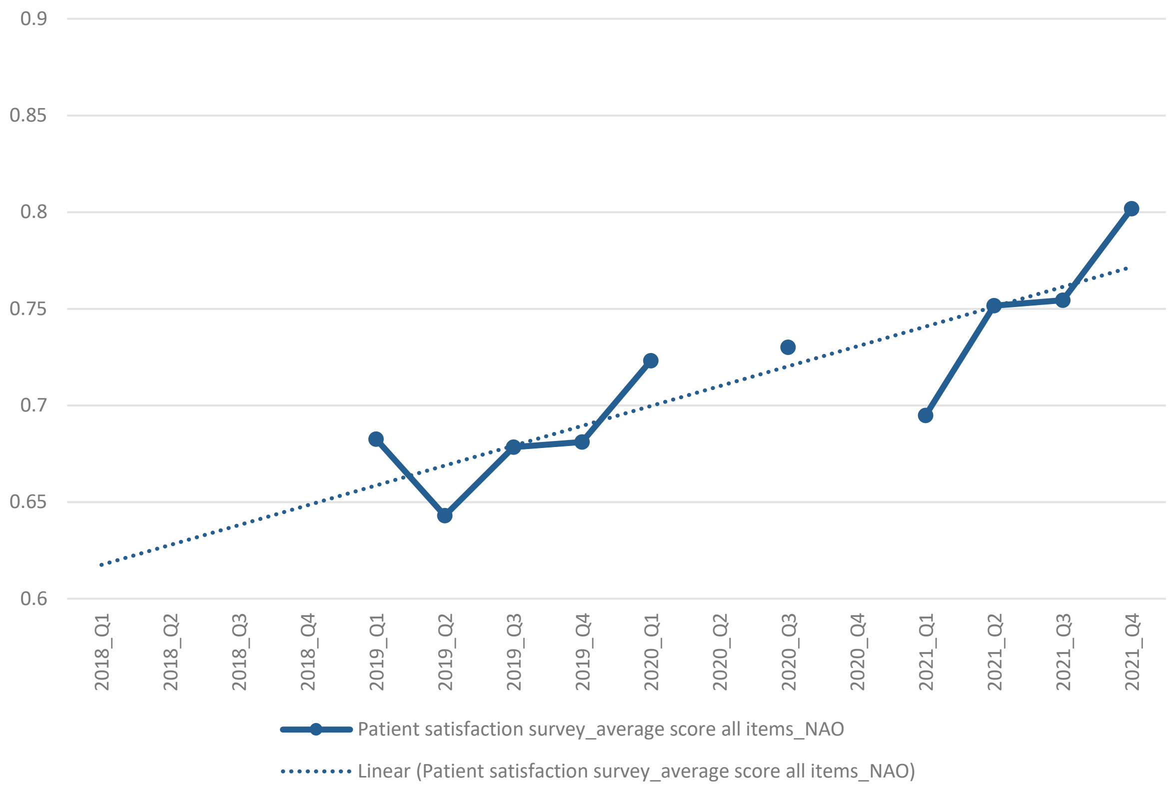


Patient satisfaction survey

5.3.31 A useful tool in ascertaining the quality of the patient's experience at the GGH was the patient satisfaction survey introduced in Q1 2019. The survey addressed the multiple dimensions of patient satisfaction and sought to gauge the entire patient experience and services provided throughout one's hospital stay. The survey comprised ten key topics, namely, communication with nurses, communication with doctors, the responsiveness of hospital staff, communication about medicines, discharge information, food quality and choice, cleanliness of the hospital environment, quietness of the hospital environment, overall hospital rating, and willingness to recommend the hospital.

5.3.32 A review of the GGH quarterly reports indicated that the hospital was initially concerned about the response rate to this survey. Although the GGH noted that the rate had improved by Q1 2020, another decline was registered shortly thereafter, this time partly attributable to the exclusion of certain wards that were redesignated for use in relation to the COVID-19 pandemic. Notwithstanding these limitations, the overall result of the patient satisfaction surveys undertaken by the GGH was positive across all key topics. The NAO combined the scores corresponding to all the aspects of the survey, with the resulting overall trend showing an improvement in terms of patient satisfaction (Figure 33 refers).

Figure 33 | GGH patient satisfaction survey: Combined score, 2018-2021



Karin Grech Rehabilitation Hospital – Key Performance Indicators

5.3.33 The KGRH drew up its first KPI report for the period Q1 2018. The intended aim of this report was to establish several KPIs, monitor the KGRH's performance over time and establish targets and models for improvement. Also acknowledged was that the KGRH aimed to achieve optimal communication between all stakeholders involved in providing care to inpatients and outpatients, be they medical, nursing and allied health professionals. Cited was that the KPI reports were to serve as the basis for the identification of the strengths of the KGRH and gaps that warranted corrective action.

5.3.34 In all, in its Q1 2018 report, the KGRH set 27 KPIs against which to gauge its performance. Additional KPIs were introduced, while others were further disaggregated in Q1 2019, resulting in a total of 43 KPIs. These are reproduced in Figure 34.

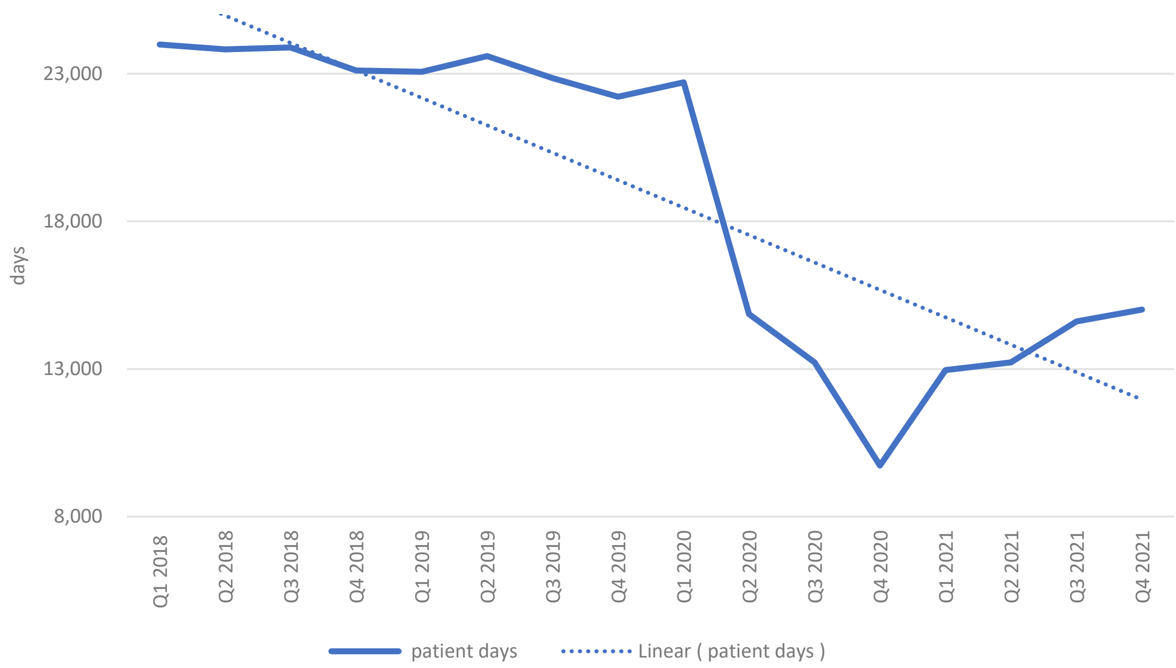
Figure 34 | KGRH: KPIs

KPIs		
Percentage admissions from the MDH versus the community	Admissions from the MDH	Admissions from the community
Patient days	Hospital occupancy rate	ALOS hospital
ALOS rehabilitation	ALOS stroke	ALOS geriatric
Mortality rate	Percentage long-term care patients	Readmission rate to KGRH
Readmission rate to MDH	Discharge outcome: Home	Discharge outcome: Elderly homes
Discharge outcome: MDH	Discharge outcome: Deceased	Waiting times: Patient transfer MDH to KGRH
Waiting times: Non urgent physiotherapy outpatient services	Waiting times: Orthotics	Waiting times: Upper limb prosthetics
Waiting times: Lower limb prosthetics	Hospital acquired infections: CRE	Hospital acquired infections: KP/EBSL
Hospital acquired infections: VRE	Hospital acquired infections: MRSA	Hospital acquired infections: C.Diff
Hospital acquired infections: Viral infections	All pressure injuries	Hospital acquired pressure injuries (HAPI)
HAPI excluding stage 1	Total falls rate/patient day	Falls rate with injury/patient day
Falls rate with serious injury/patient day	Patient satisfaction survey: Response rate	Patient satisfaction survey: Treatment received
Patient satisfaction survey: Improvement in condition	Patient satisfaction survey: Respect to privacy	Patient satisfaction survey: Hospital cleanliness
Patient satisfaction survey: Staff politeness	Patient satisfaction survey: Hospital environment	Patient satisfaction survey: Food presentation
Patient satisfaction survey: Food taste		

Admissions, patient days and occupancy

5.3.35 A key indicator of the level of activity registered by the KGRH was the number of patient days. Between 2018 and 2021, the total number of patient days fluctuated between 9,729 days in Q4 2020 and 23,990 in Q1 2018. Immediately evident in Figure 35 is the steep and sudden decline in patient days experienced in Q2 2020, undoubtedly connected to the onset of the COVID-19 pandemic. While the number of patient days per quarter continued to rise throughout 2021 from the trough registered in Q4 2020, when compared to the levels consistently recorded between 2018 and 2019, the KGRH's activity in this sense remained limited.

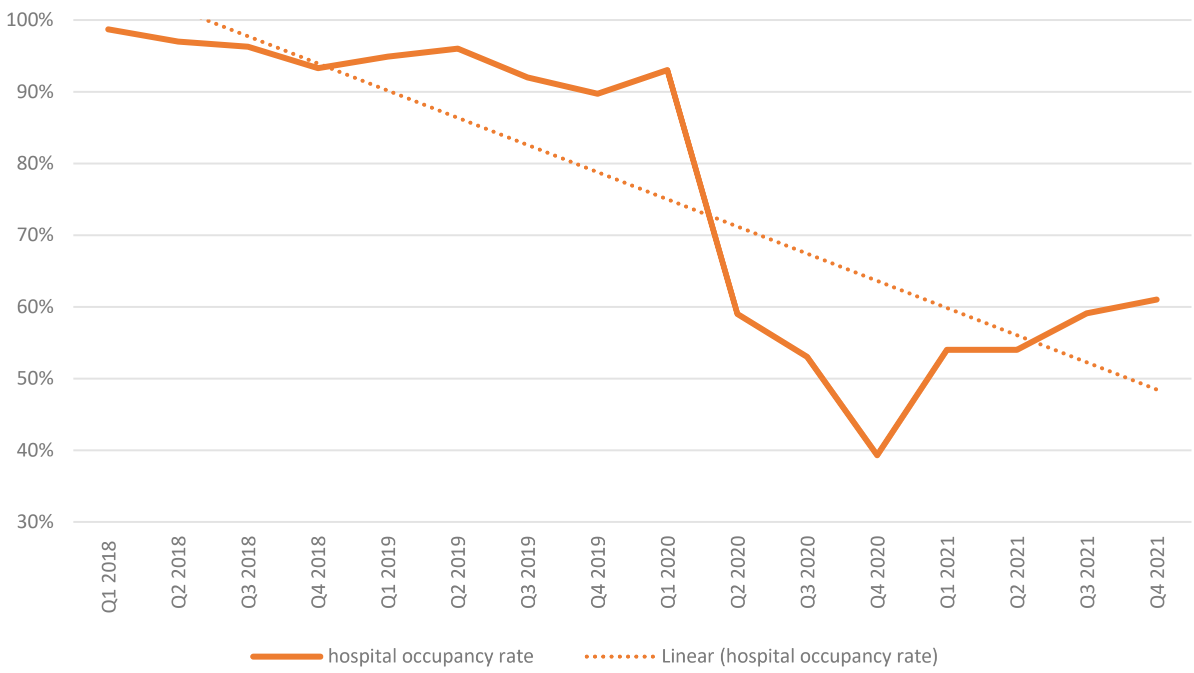
Figure 35 | KGRH patient days, 2018-2021



5.3.36 In its Q3 2019 KPI report, the KGRH acknowledged that the decrease in the number of patient days resulted in a decreased occupancy rate. However, the KGRH noted that when comparing Q3 2018 with Q3 2019, there was an average of 12 beds per day that were not being used due to the refurbishment of one of the wards.

5.3.37 Another fundamental indicator of the KGRH's overall activity was captured in its hospital occupancy metric. As illustrated in Figure 36, the trend registered in terms of hospital occupancy at the KGRH mirrored that of patient days, with consistently high levels of occupancy registered between Q1 2018 and Q1 2020, followed by a sharp decline between Q2 2020 and Q4 2020, and an eventual gradual partial recovery from Q1 2021 onwards. During the period reviewed, hospital occupancy at the KGRH ranged between 39.3 per cent in Q4 2020 and 98.7 per cent in Q1 2018.

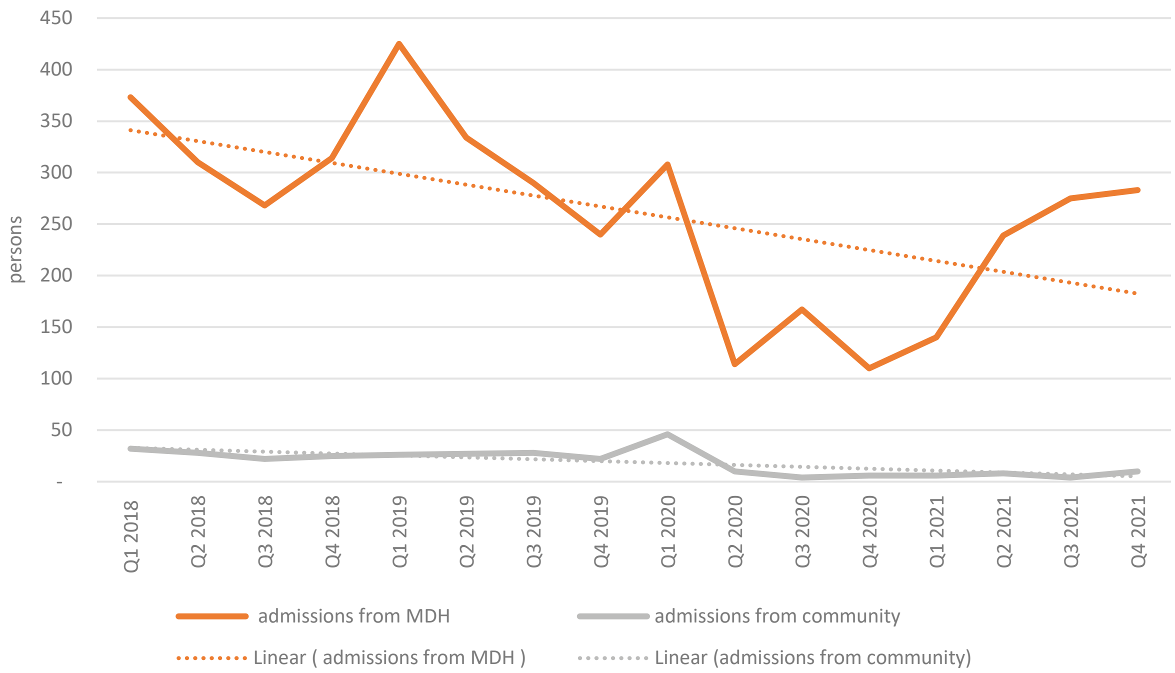
Figure 36 | KGRH hospital occupancy, 2018-2021



5.3.38 The KGRH highlighted the significant decrease in hospital occupancy registered from Q1 2020 onwards. In response to the COVID-19 pandemic, the KGRH endeavoured to discharge all patients who could be transferred to their own homes or homes for the elderly. Noted in the Q1 2020 KPI report were the protocols introduced during the pandemic, which protocols limited admissions to the KGRH to 24 patients every two weeks. At a certain point, admissions came to a complete halt, in the main due to compliance with infection control guidelines and resulting from industrial action that was subsequently taken.

5.3.39 Similar, albeit less pronounced, were declines noted in terms of admissions by the KGRH from the MDH and from the community (Figure 37 refers). Admissions from the MDH declined from a high of 425 persons registered in Q1 2019 to a low of 114 persons recorded in Q2 2020. In terms of community admissions, these ranged from 46 persons in Q1 2020 to four persons in Q3 2020 and Q3 2021.

Figure 37 | KGRH admissions from MDH and the community, 2018-2021

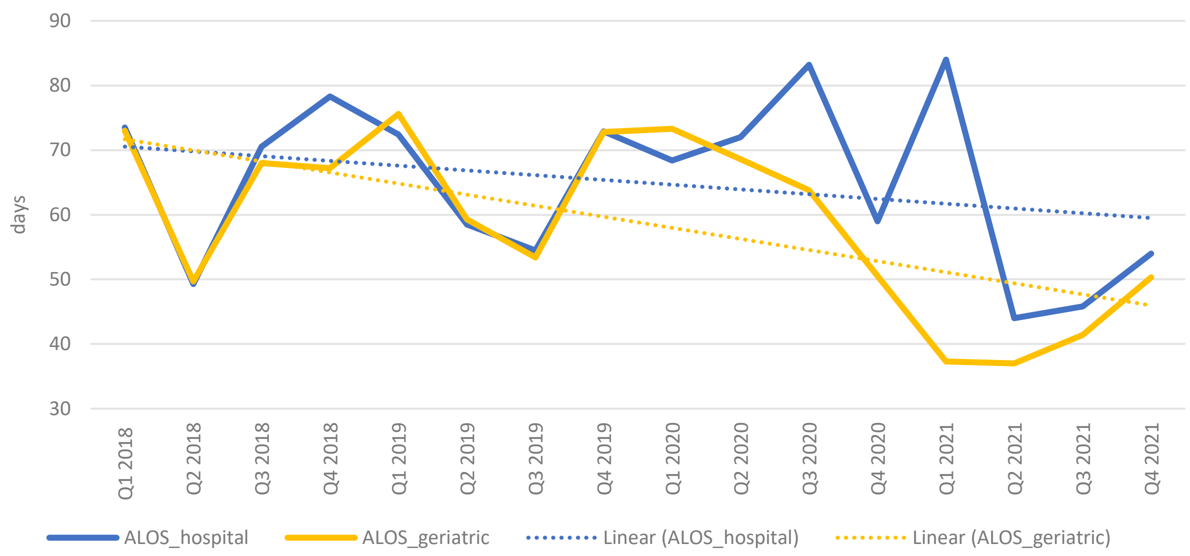


5.3.40 The evident drop in admissions from the MDH and the community that was registered from Q2 2020 onwards was discussed in several KGRH KPI reports. The KGRH explained that during this period, the hospital had to stop the majority of admissions and outpatient services in accordance with the guidance issued by the Public Health Department. The KGRH also referred to instances of industrial action that further decreased the number of admissions. The persistent impact of measures associated with the COVID-19 pandemic on admissions from the MDH by the KGRH was reiterated in the KPI report of Q1 2021, wherein comparisons were drawn with the report of Q1 2020. Noted in this respect was that admissions were down by approximately 50 per cent year-on-year for this quarter.

Average length of stay

5.3.41 An important indicator used in analysing the efficiency of a hospital is the ALOS. Between 2018 and 2021, the KGRH-wide ALOS trended downwards overall (Figure 38 refers). The highest hospital-wide ALOS stood at 84 days and was registered in Q1 2021, while the lowest stood at 44 days and was registered in the subsequent quarter. Similarly, during the period reviewed, the ALOS for geriatric patients also generally dropped, with the decline being particularly steep in 2021. The average ALOS for geriatric patients averaged 64.5 days in 2018, 65.3 days in 2019, 64.1 days in 2020 and 41.5 days in 2021.

Figure 38 | KGRH ALOS: Hospital-wide and geriatric patients, 2018-2021



5.3.42 In its KPI report for Q3 of 2019, the KGRH attributed the decrease in ALOS to the broader decrease in the number of patient days registered by the hospital. Elaborating on the decrease in the ALOS of geriatric patients, in its Q1 2021 KPI report, the KGRH attributed this change to the transfer of patients under this category to their respective home or to homes for elderly.

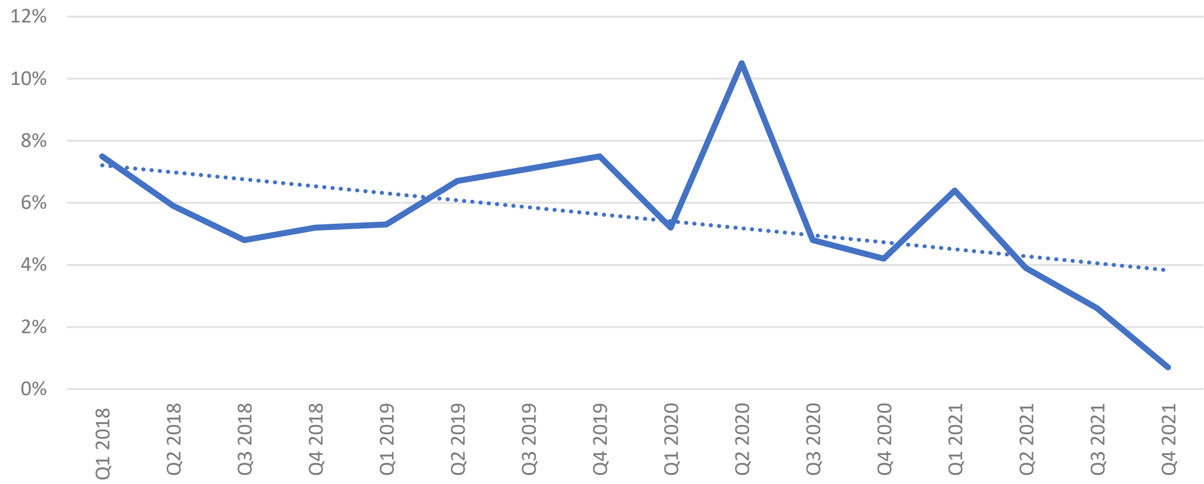
5.3.43 While the hospital-wide ALOS and that of geriatric patients decreased, that of rehabilitation and stroke patients trended upwards on average between 2018 and 2021 (Figure 39 refers). While acknowledging the increase in ALOS for patients undergoing rehabilitation, the KGRH referred to the possible skew of data arising from patients whose stay at the hospital was extraordinarily extended due to housing issues. Noted by the NAO was that while the ALOS for rehabilitation patients ranged from 43 days in Q2 2018 to 125.4 days in Q4 2020, the ALOS for stroke patients ranged from 36.5 days in Q1 2020 to 97.4 days in Q3 2020.

Figure 39 | KGRH ALOS: Rehabilitation and stroke patients, 2018-2021

Mortality rate, readmission and discharge outcome

5.3.44 Another crucial indicator for the quality of care received in a hospital was the patient mortality rate. Between 2018 and 2021, the overall mortality rate trended downwards, declining substantially at the end of the period reviewed (Figure 40 refers). However, a particularly steep spike was noted in Q2 2020, explained by the KGRH KPI report of Q2 2020 in terms of the fact that during this quarter no patients were discharged from the hospital. The patient mortality rate over the years reviewed averaged 5.85 per cent in 2018, 6.65 per cent in 2019, 6.18 per cent in 2020 and 3.40 per cent in 2021.

Figure 40 | KGRH patient mortality rate



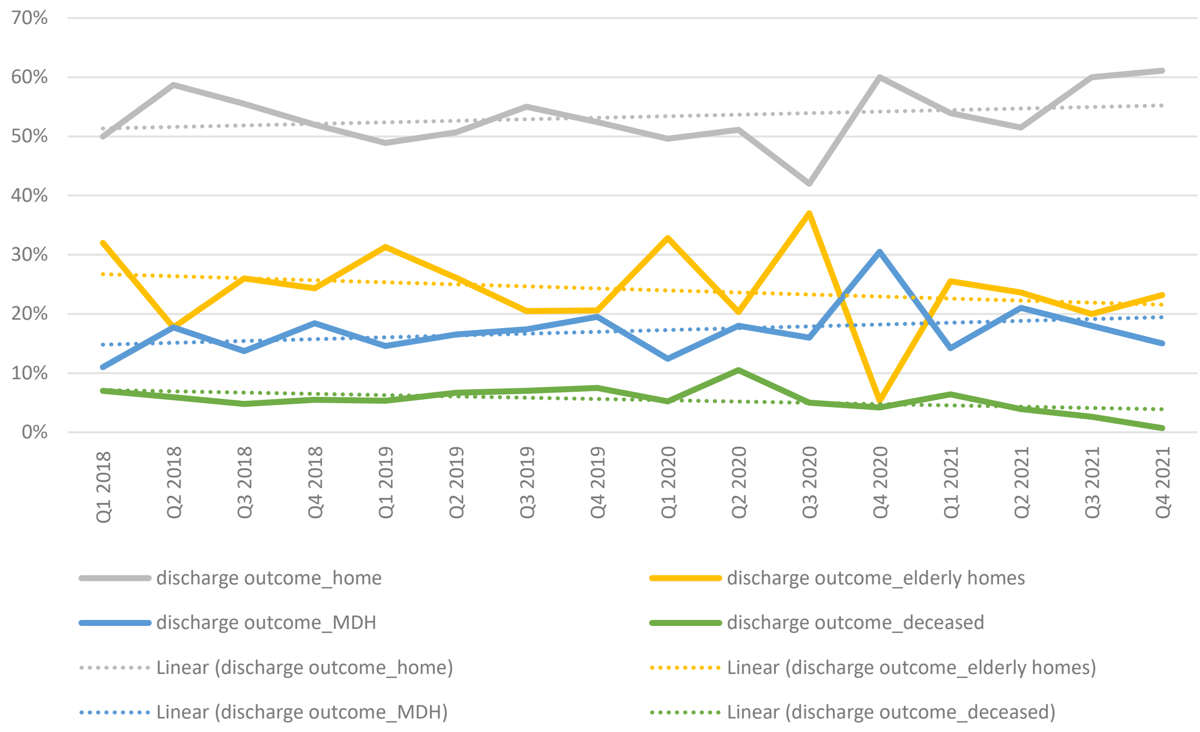
5.3.45 The KGRH KPI reports also provided information relating to the hospital's readmission rate, which indicator was another component and facet of the quality of hospital care. The readmission rate to the KGRH and the MDH trended upwards on average between 2018 and 2021 (Figure 41 refers). The readmission rate to the KGRH ranged from 0 per cent in Q1 2020 and Q1 2021 to 9.5 per cent in Q4 2020 while the readmission rate to the MDH ranged from 2.4 per cent in Q2 2018 to 13.5 per cent in Q3 2020.

Figure 41 | Readmission rate to KGRH and MDH, 2018-2021

5.3.46 Of note was an observation made by the KGRH in its KPI report of Q3 2019, wherein it was noted that the mortality rate and the readmission rate to the MDH had increased in comparison to Q3 2018. The KGRH attributed this increase to the fact that a percentage of patients transferred to the KGRH were not fit to be discharged from the MDH. The situation concerning readmission to the MDH was again noted in the KPI reports of Q1 2020, Q1 2021 and Q2 2021.

5.3.47 The KGRH KPI reports also provided information with respect to the discharge outcome, categorising the outcomes into four categories, namely home, the MDH, elderly homes and deceased (Figure 42 refers). The number of KGRH patients being discharged to return home and to be admitted to the MDH trended upwards between 2018 and 2021, while the number of KGRH patients being discharged to elderly homes and those deceased trended downwards overall. Most patients discharged (an average of 53.3 per cent during the period reviewed) from the KGRH left the hospital to go home. An average of 24.2 per cent were discharged from the KGRH to return to elderly homes. Those discharged to be admitted to the MDH stood at an average of 17 per cent between 2018 and 2021 while an average of 5.5 per cent passed away while at hospital.

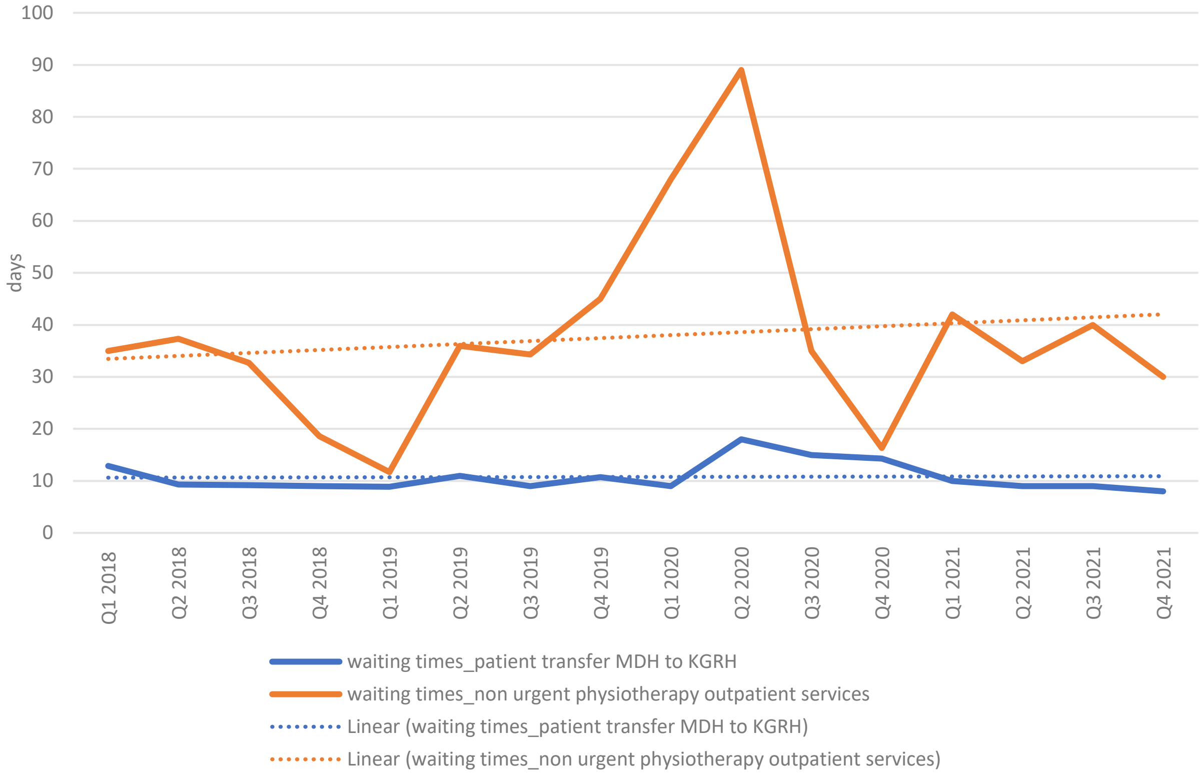
Figure 42 | KGRH discharge outcome, 2018-2021



Waiting times

5.3.48 Two other indicators of quality of care measured in the KGRH KPI reports were the waiting times for patient transfer from the MDH to the KGRH and for non-urgent physiotherapy outpatient services (Figure 43 refers). Between 2018 and 2021, the waiting time for patient transfer from the MDH to the KGRH was mostly stable and averaged 10.7 days, with a steep rise to 18 days in Q2 2020. The waiting time with respect to non-urgent physiotherapy outpatient services trended upwards overall during the period reviewed. Similar to the waiting time for patient transfer from the MDH to the KGRH, the waiting time for non-urgent physiotherapy outpatient services rose substantially in Q2 2020.

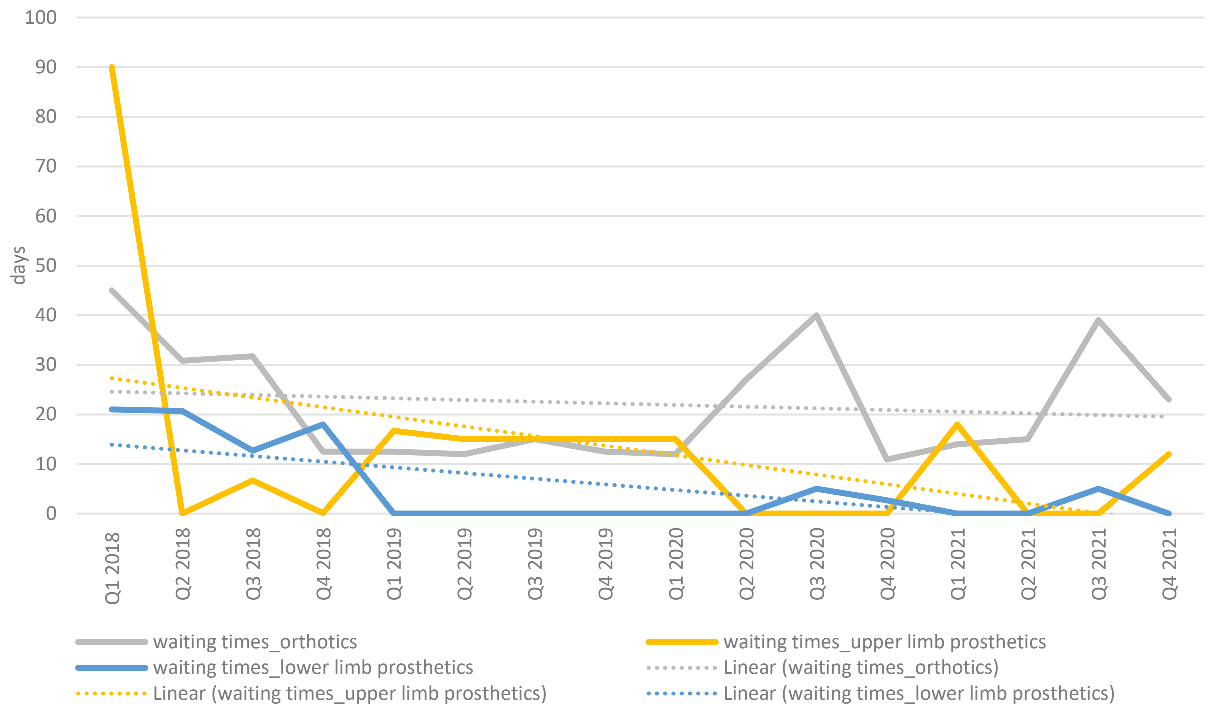
Figure 43 | KGRH waiting times for patient transfer from MDH and for non-urgent physiotherapy outpatient services, 2018-2021



5.3.49 The KGRH attributed the sharp increase in waiting times for patient transfers from the MDH and for outpatient services to measures associated with the pandemic and to industrial action in effect in Q2 2020. While the waiting time for non-urgent physiotherapy outpatient services decreased drastically by Q4 2020, an increase was subsequently registered in 2021. The KGRH indicated that this increase in waiting time was due to temporary and permanent capacity constraints experienced.

5.3.50 Three other indicators measured by the KGRH KPI reports relating to waiting times were those with respect to orthotics, upper limb and lower limb prosthetics (Figure 44 refers). All three indicators trended downwards between 2018 and 2021, and all registered the highest values during the period being reviewed in Q1 2018. The waiting time for orthotics ranged from 45 days in Q1 2018 to 10.9 days in Q4 2020, that for upper limb prosthetics ranged from 90 days in Q1 2018 to 0 days in several quarters, while the waiting time for lower limb prosthetics ranged from 21 days in Q1 2018 to 0 days in multiple quarters.

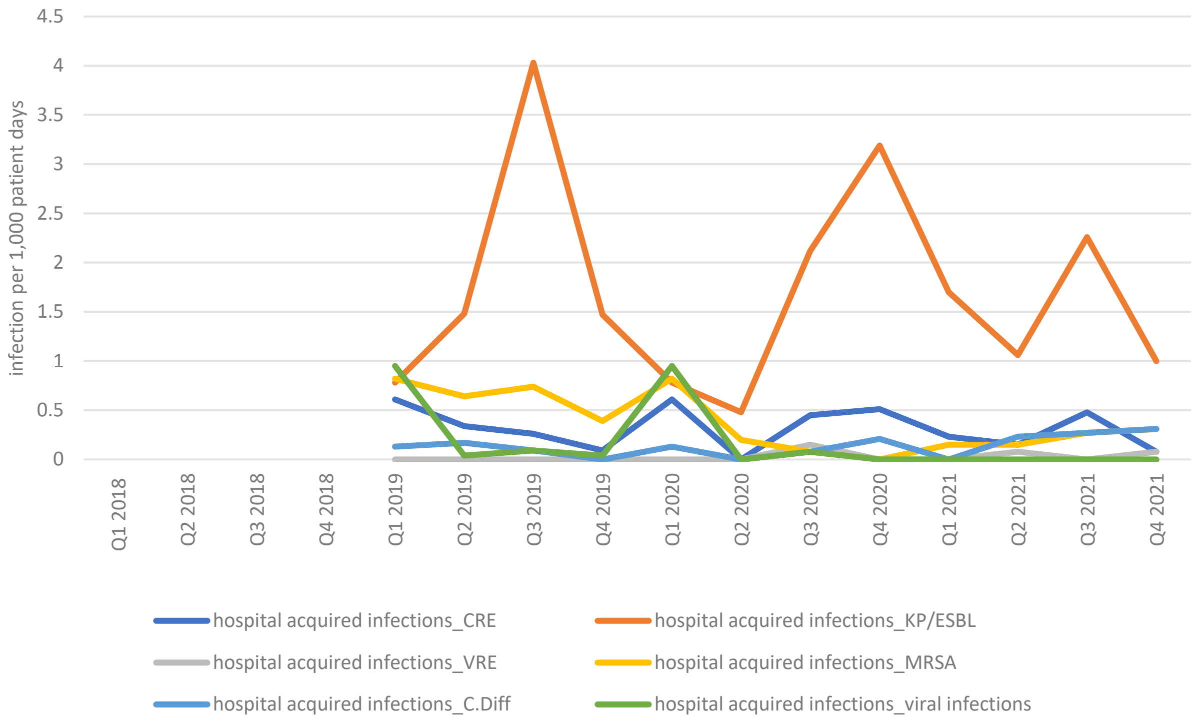
Figure 44 | KGRH waiting times for orthotics and prosthetics, 2018-2021



Hospital acquired infections

5.3.51 A major patient safety indicator reported on by the KGRH was the rate of hospital-acquired infections. The KGRH KPI reports analysed six different types of hospital-acquired infections, namely CRE, VRE, C.Diff, KP/ESBL, MRSA and viral infections (Figure 45 refers). No data with respect to these indicators was available for the year 2018. Of note were the peaks registered in terms of KP/ESBL hospital acquired infections, evident in Q3 2019, Q4 2020 and Q3 2021.

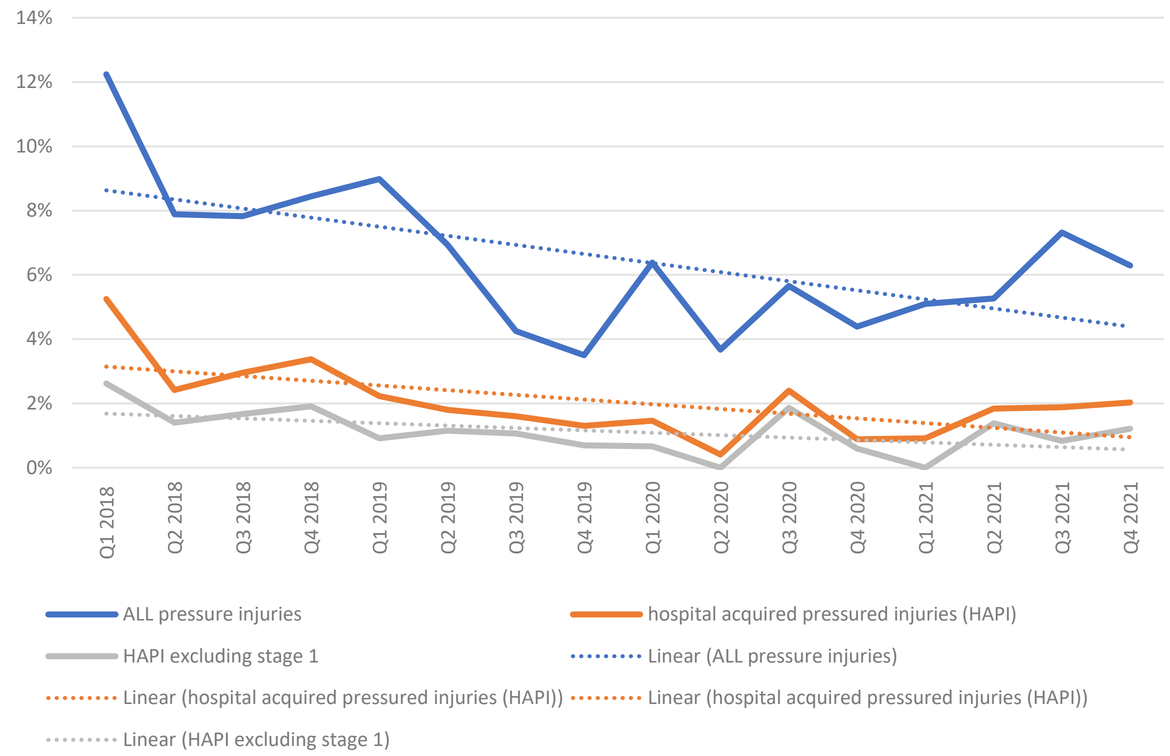
Figure 45 | KGRH hospital acquired infections, 2018-2021



Injuries and falls

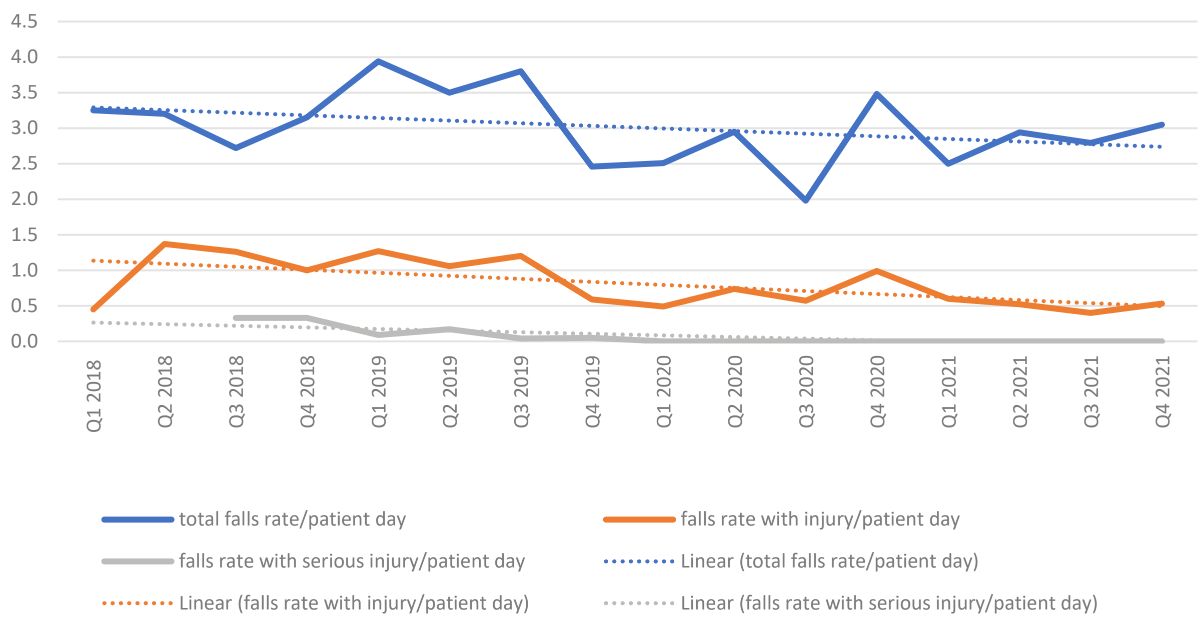
5.3.52 The KGRH KPI reports provided information relating to patient injuries while being cared for at the hospital. Measured in this respect were all pressure injuries, HAPI and HAPI excluding stage 1. In the period reviewed, improvements were registered in terms of these three measures of patient injuries, with a downward trend noted in each instance (Figure 46 refers). Between 2018 and 2021, all pressure injuries averaged 6.66 per cent and ranged from 12.24 per cent in Q1 2018 to 3.5 per cent in Q4 2019.

Figure 46 | KGRH patient injuries, 2018-2021



5.3.53 A similar improvement, although less marked, was registered in terms of the incidence of patient falls recorded at the KGRH (Figure 47 refers). This could be seen through three indicators, namely total falls rate per patient day, falls rate with injury per patient day and falls rate with severe injury per patient day. A trend of gradual reduction was noted in each instance, with the average total falls rate per patient day standing at 3.08, 3.43, 2.73 and 2.82 in 2018, 2019, 2020 and 2021, respectively. The average falls rate with injury per patient day for the period was 0.83, while that for the falls rate with serious injury was 0.03.

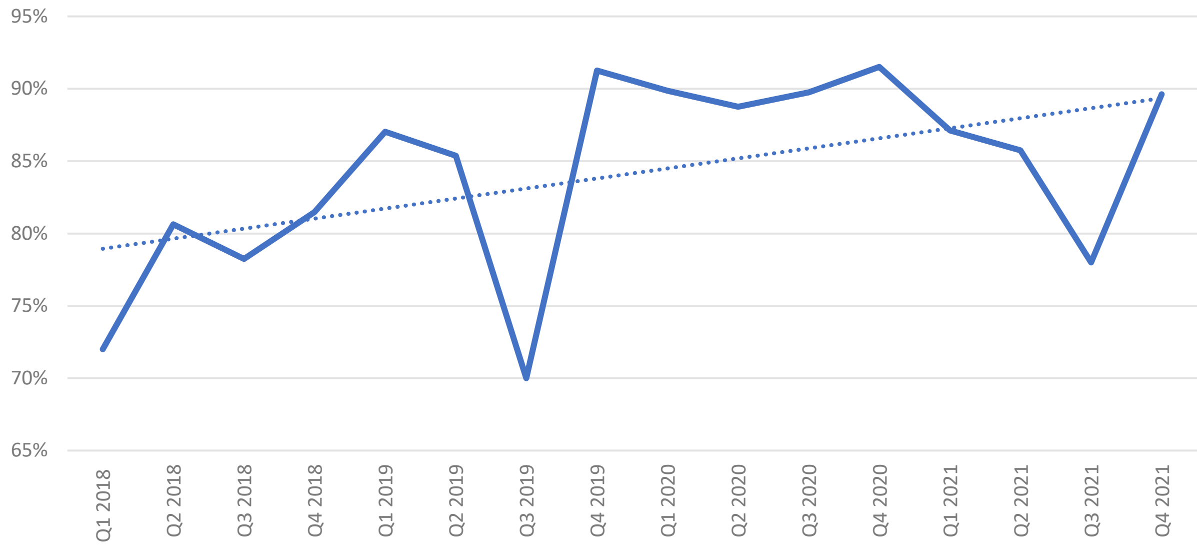
Figure 47 | KGRH patient falls rates, 2018-2021



Patient satisfaction survey

5.3.54 An integral component of the KGRH's system of quality control was a patient satisfaction survey. The survey comprised several aspects of the patients' experience of the service provided, that is, the treatment received, the improvement in condition, respect to privacy, hospital cleanliness, staff politeness, hospital environment, food presentation, and food taste. The average response rate of the patient satisfaction survey during the period reviewed stood at 31 per cent. The NAO combined the scores corresponding to all the aspects of the survey, with the resulting overall trend showing an improvement in terms of patient satisfaction (Figure 48 refers).

Figure 48 | KGRH patient satisfaction survey: Combined score, 2018-2021



5.3.55 Delving into the aspects of the patient satisfaction survey, one can note that the most significant improvements registered during the period 2018 to 2021 were those of respect to privacy and the hospital environment (Figure 49 and Figure 50 refer). The lowest score for respect to privacy, standing at 57 per cent, was registered in early 2018. However, this steeply rose to an average of 93 per cent between 2020 and 2021. A similar pattern emerged in relation to the hospital environment, with a low of 56 per cent in Q1 2018 that gradually rose to an average of 92 per cent between 2020 and 2021. The only aspect where a decrease in patient satisfaction was noted was in connection with hospital cleanliness. The average patient satisfaction for this aspect declined from 92 per cent, to 90 per cent, to 89 per cent and to 84 per cent in 2018, 2019, 2020 and 2021, respectively.

Figure 49 | KGRH patient satisfaction survey: Part 1, 2018-2021

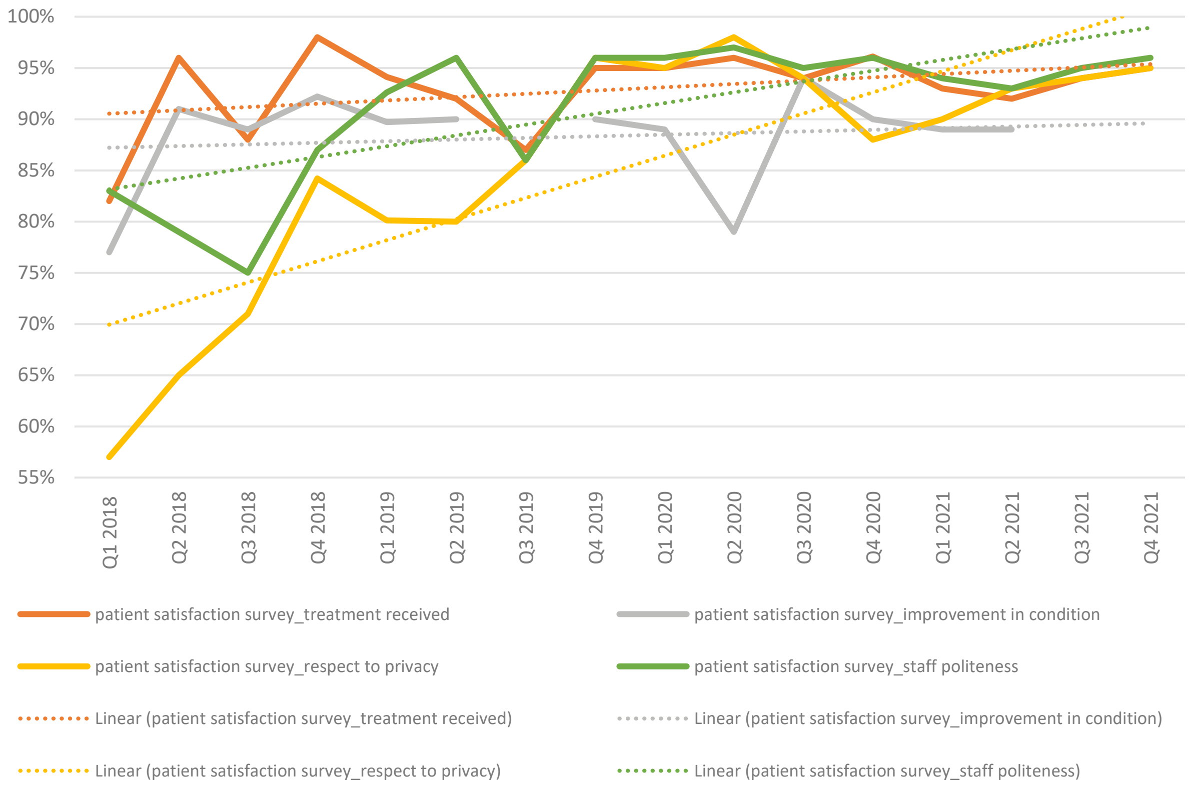
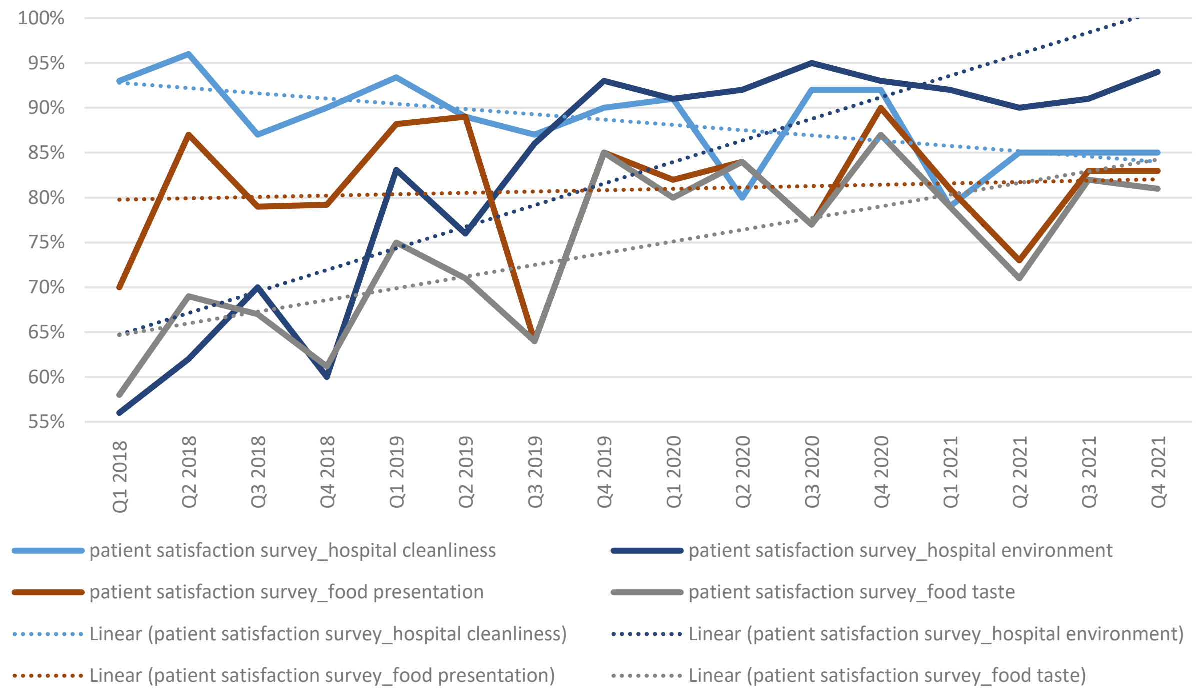


Figure 50 | KGRH patient satisfaction survey: Part 2, 2018-2021



5.4 Key Performance Indicators

5.4.1 Other metrics established to gauge the performance of the concessionaire were a series of KPIs specified in the HSDA. While the quarterly quality performance reports presented in the preceding section adopted a patient-centred and clinical focused approach, the KPIs represented a broader spectrum of measures against which progress was to be assessed. The KPIs set in the HSDA related to building and equipment, employee relations and labour management, and service delivery and quality of care. The concessionaire was to implement these KPIs as from 2018; however, the parties agreed to revise the KPIs annually as from 2019. Commencing from 2018, the concessionaire was to provide the Government with monthly and yearly KPI reports.

5.4.2 The NAO sought to ascertain whether the KPIs established in the HSDA were achieved by the SHC. According to the MFH, a point of contention was raised by the SHC as regards when the KPIs were to come into effect, with the Concessionaire maintaining that these indicators only became obligatory after the completion of the project. This stance was mirrored by the MFH, with the Ministry informing the NAO that the KPIs provided an overarching set of objectives that were to be achieved by the Concessionaire on completion of the milestones envisaged in the SCA. According to the MFH, it was for this reason that the SHC insisted that the achievement of the KPIs specified in the HSDA became obligatory only once the project was completed. Instead, other KPIs, which focused on the operational goals that were to be achieved, were formulated. The revised KPIs were discussed by the QAB (section 5.2 refers) and reported on in the performance reports submitted by the SHC to the MFH (section 5.3 refers). The Consultant MFH informed the NAO that the revised KPIs were based on those established for the MDH, adapted to the needs of the GGH and the KGRH. Notwithstanding the views of the MFH and the SHC, this Office deemed these perspectives as incongruent with the provisions of the HSDA, which specified 2018 as the point of applicability of the KPIs as specified in the Agreement.

5.4.3 Regardless, the NAO sought to assess whether progress was registered in terms of the KPIs established in the HSDA. Queries to this end were addressed to the MFH. An update on progress achieved by the SHC as at end June 2022 is provided in Figure 51.

Figure 51 | Progress made on the KPIs following 2018 at the GGH, the KGRH and the SLH, June 2022

	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 indicated that 10 orthopaedic beds were made available at the GGH. As regards the KGRH, 28 beds were provided by the SHC in line with the MFH's request to deal with the anticipated surge in patients in winter. However, it was unclear to the NAO whether these were additional to the number of beds that were to be provided in accordance with the HSDA.			

	KPIs	GGH	KGRH	SLH
	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: In terms of medical equipment procured by the SHC, the MFH referred to argon diathermy equipment, an autologous blood transfusion unit, a refrigerator for the mortuary, ophthalmology surgery microscopes, video laryngoscopes and physiotherapy equipment for the GGH and the KGRH. However, major expense items specified in the RfP were not installed. As for motor vehicles, the MFH reported that the SHC procured a number of motor vehicles and vans, yet later informed the NAO that the ambulances sourced by the Concessionaire were old second-hand vehicles. The MFH indicated that the extra beds required in terms of the planned response to major incidents were not provided by the SHC. Regarding the equipment yet to be delivered, the MFH stated that the Government and the SHC were negotiating new conditions, including timelines.			
	3: Comparison of the use of lab and imaging services from MDH before and after Concessionaire 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 rehabilitation services at the SLH
	Progress: The MFH indicated that the turnaround times for tests carried out improved as of July 2018. According to the Ministry, the GGH had replaced its laboratory equipment and linked it with the IT system, therefore quality and output were expected to increase. The MFH noted that no other data was provided by the SHC despite requests put forward regarding this indicator.			
Employee relations and labour management	**4: Employee satisfaction: Evaluating the employee satisfaction through transition period**	Concessionaire was to hold monthly employee satisfaction surveys	Concessionaire was to hold monthly employee satisfaction surveys	Concessionaire was to hold monthly employee satisfaction surveys
	Progress: An employee satisfaction survey was piloted by the SHC; however, despite repeated requests by the MFH, no further progress was registered.			

	KPIs	GGH	KGRH	SLH
	5: Employee training, development and progression plan	Concessionaire was to assess existing labour skill levels, provide training and development programs and collect data on career progression	Concessionaire was to assess existing labour skill levels, provide training and development programs and collect data on career progression	Concessionaire 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 by the SHC with respect to this KPI, citing resuscitation training, fire evacuation drills, operating theatre standard operating procedures, recognition of the deteriorating patient, the use of autologous blood transfusion unit, and pain assessment and treatment. In addition, the QAB referred to training provided by senior anaesthetists to all staff at the GGH regarding epidural services and pain relief, as well as training on choking and early warning scores.			
	6: Management of consultants and specialists	Concessionaire would need to ensure the availability of consultants and specialists	Concessionaire would need to ensure the availability of consultants and specialists	Concessionaire would need to ensure the availability of consultants and specialists
	Progress: The MFH noted that a neurologist, an orthopaedic consultant, a replacement general surgeon, a paediatric consultant, a consultant in respiratory medicine, two ophthalmic surgeons, a consultant anaesthetist and a consultant psychiatrist were engaged by SHC. The SHC also engaged a nephrologist, appointed a medical consultant to run an endocrinology clinic and employed a resident psychiatrist and a resident obstetrician. However, the MFH acknowledged that a resident radiologist, a geriatrician, a cardiologist, a urologist, a renal physician and emergency physicians were not deployed by the SHC.			
Service delivery and quality of care	**7: In patient care and various services provided**	Concessionaire 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.	Concessionaire 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.	Concessionaire 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.
	Progress: An element of progress was acknowledged by the MFH in respect of KPI7, with the Ministry citing the provision of screening for glaucoma, more outpatient clinics – including renal and sexually transmitted diseases, and the provision of a second helicopter to ensure continuity of service. Improvements with respect to urology services provided at the GGH were also noted in a meeting of the QAB.			

	KPIs	GGH	KGRH	SLH
	8: Outpatient care and primary care services	Concessionaire was to provide all services that are outlined in the Agreement and collect the numerical data of number of services provided in each Department.	Concessionaire was to provide all services that are outlined in the Agreement and collect the numerical data of number of services provided in each Department.	Concessionaire was to provide all services that are outlined in the Agreement and collect the numerical data of number of services provided in each Department.
	Progress: Noted in the proceedings of the QAB was that improvement had been registered with respect to the outpatient waiting lists. This was partly attributed to the fact that cardiologists had commenced weekly outpatient clinics and consultations at the GGH that led to a significant number of procedures carried out. As regards primary care, the MFH informed the NAO that the Government reassumed responsibility for primary health care.			
	9: Number of surgeries including minor, critical and elective	Concessionaire was to provide and track data on the number, type and length of surgeries throughout the year		
	Progress: The NAO enquired whether the SHC provided the MFH with information relating to the number, type and duration of surgeries carried out. In response, the Ministry indicated that data regarding the number and type of surgery was disclosed; however, information about duration was not provided, bar for a short period of time during which a pilot study was carried out. Elaborating on the matter, the MFH indicated that the measurement of duration was stopped and instead the severity of operations was determined through reference to BUPA categories. Supplementing the NAO's understanding of progress registered with respect to this KPI were the minutes of meetings held by the QAB. The Board noted an increase in orthopaedic surgical activity, which allowed the GGH to also accommodate patients on the MDH waiting list.			
	10: IT and hospital management system	Concessionaire was to install and incorporate IT systems to digitalise patient data		
	Progress: Conflicting information was obtained by the NAO regarding the IT and hospital management system. While the SHC indicated that such a system was operational, the MFH contended that this was not in place. The probable explanation for this divergence is that the MFH was not provided with access to the system introduced by the SHC.			

	KPIs	GGH	KGRH	SLH
	11: Patient care and satisfaction	Concessionaire was to collect and measure patient satisfaction on a monthly basis	Concessionaire was to collect and measure patient satisfaction on a monthly basis	Concessionaire was to collect and measure patient satisfaction on a monthly basis
	Progress: The MFH indicated that patient satisfaction surveys continued to be carried out at the KGRH following the change of control of the concession to the SHC, while the corresponding patient satisfaction surveys at the GGH commenced as from Q1 2019.			

5.4.4 Although progress was registered with respect to all of the KPIs, albeit to different extents, none of the indicators were completely achieved. This varying progress was reflected in that stated by the Minister for Health, who acknowledged an element of clinical improvement, and that maintained by the MFH in its claim that the clinical output provided by the SHC remained of the same quality and quantity as that provided before the concession. The Consultant MFH argued that the lack of progress could be attributed to the fact that the number of cases seen at the GGH did not justify the substantial investment to be made. For this reason, the Consultant MFH asserted that certain services that the SHC was obligated to provide were not commercially viable. Consequently, the Consultant MFH explained that the SHC was reluctant to invest in equipment that was to be used infrequently and for which a charge per patient was to be levied and therefore did not justify the capital outlay required, with certain cardiac-related services cited as a case in point. Elaborating in this respect, the Consultant MFH noted that the decision to exclude oncology, brain surgery and cardiac paediatric surgery from the list of obligations was also justifiable on the same grounds. Similarly, the provision of healthcare services to patients previously sent abroad for treatment was also not considered feasible. According to the Consultant MFH, this confirmed that certain aspects of the concession as contracted were not implementable.

5.4.5 The MFH acknowledged that following the change in control of the concession, the SHC's major efforts were mainly concentrated on the construction of the Barts Medical School. This was corroborated by the Minister for Health, who stated that the Government's priority was the completion of the School within a two-year timeframe, which objective was in fact achieved. As regards the KGRH and the SLH, the MFH indicated that the SHC was considering other plans for these sites. According to the MFH, the SHC intended to transfer all services provided at the KGRH to the SLH so that the former could be demolished and rebuilt, given the dire state of the building. Nevertheless, the MFH noted the design plans put forward by the SHC were yet to be approved by the Government.

5.4.6 Another factor that affected hospital operations during the period under review was the COVID-19 pandemic. According to the Consultant MFH, the Government expended funds to improve facilities and render them suitable for COVID-19 patients, which improvements ought to have been carried out by the SHC a priori. The SHC referred to the significant investment it made to equip the GGH and the KGRH in respect of the COVID-19 pandemic, citing an investment of €6,000,000 that included a new Intensive Therapy Unit, a unique air-conditioning and filtering system, and protective equipment. The MFH affirmed that this investment was reimbursed by the Ministry and noted that some of the investment made at the GGH in response to the pandemic would continue to be used by the hospital, citing new equipment at the Intensive Care Unit and the Accident and Emergency Department, as well as the new vacuum supplies and the liquid oxygen reservoir set up as examples.

5.4.7 Although not directly linked to the KPIs, the President SHC Malta highlighted the improvements registered by the SHC since it took over control of the concession from the VGH. Commenting in this respect, the President SHC Malta stated that since becoming responsible for the operations of the GGH, the KGRH and the SLH in April 2018, she was granted access to considerable key resources within the SHC network. The President SHC Malta emphasised the need for the restructuring of the entire setup to make processes more efficient and reduce costs. To this end, the SHC assisted with the setting up of a new team and the employment of key personnel. The President SHC Malta also referred to the several layoffs of staff who had been engaged by the VGH and who had non-defined roles, such as head of liaison and head of hospitality. Instead, key hires for the core functions of a company were made, such as IT, HR, procurement and supply chain, facility management and quality and patient safety. According to the President SHC Malta, the SHC management team as formed in 2018 remained more or less unchanged and functioned as a lean team. In essence, the SHC focused its efforts on ensuring that any resources that were not core to providing healthcare were removed. The President SHC Malta cited the rental by the VGH of several apartments for its management staff as an example in this regard, which rentals were rescinded by the SHC. Another example cited by the President SHC Malta related to the rental of a large villa at Ta' Xbiex that served as the VGH's head office. This rental was also terminated, with the SHC establishing its head office within the SLH. In sum, the President SHC Malta referred to the significant cost cutting exercise undertaken by the SHC to redirect funds towards functions that warranted focus, that is, on healthcare and patients.

5.4.8 From a more operational perspective, the President SHC Malta referred to the intense support provided by the SHC in terms of the development of the hospitals' HR and IT systems. The President SHC Malta noted that, prior to the SHC, the GGH, the KGRH and the SLH largely operated by means of outdated manual and paper-based systems. With the introduction of expertise sourced through the SHC, the hospitals introduced an enterprise resource platform that served to consolidate procurement, supply chain, billing, finance and other functions of operations.

5.4.9 Another aspect that received significant attention following the change of control from the VGH to the SHC related to finances. The President SHC Malta indicated that, with the assistance of financial advisors engaged by the SHC, the company's finances were reviewed and relevant filings made. A generally dire account regarding the financial management of the concession when under the control of the VGH was depicted by the President SHC Malta. For example, reference was made to the fact that management accounts were not drawn up while the concession was the responsibility of the VGH, which situation had, since then, been rectified, with statutory submissions regularly complied with. The President SHC Malta also referred to the development of a relationship with a local bank and the scrutiny of auditors as other markers of progress registered in terms of sound general financial management.

5.4.10 In terms of construction, the President SHC Malta emphasised that significant effort was expended to repair relationships with key stakeholders – relationships that had been damaged during the tenure of the VGH. Citing its strained relationship with the QMUL as an example, the President SHC Malta informed the NAO that Government had informed the SHC in no uncertain terms that it was to focus on building the Barts Medical School as the parties risked QMUL abandoning the project. The President SHC Malta highlighted that the SHC had successfully delivered in terms of this commitment, with completion of the School in October 2019 effectively representing an 18-month timeframe from takeover till finalisation. Reference was also made to the Anatomy Centre – completed within a five-month timeframe – without which students would have had to complete their anatomy training within the UK, a situation deemed unacceptable to the QMUL. According to the President SHC Malta, the relationship with the QMUL has since been restored, having received excellent feedback following the completion of the project. Testament to this was that the Barts Medical School was oversubscribed and that its first cohort of students graduated in July 2022. Assurance as to quality of the education provided, be it in terms of the facilities, the training, the quality of the teaching program as well as the school in general, was provided by the UK's General Medical Council. The Barts Medical School has performed satisfactorily in this respect year-on-year.

5.4.11 The President SHC Malta highlighted that ultimately, the patient remained central to the SHC and that the very good level of care provided was undeniable, acknowledged on several occasions by the Minister for Health. Therefore, defining the concession as a failure was an insult to all the SHC employees who worked hard despite the uncertainty of these past years, more so when one considered the backdrop of the COVID-19 pandemic. The President SHC Malta highlighted how the SHC leveraged its standing in the global supply chain to assist in the address of challenges brought about by the pandemic. The effectiveness of such interventions was reflected in how the COVID-19 rates in Gozo were contained and the number of deaths remained very low as compared to the national average. The President SHC Malta attributed the success of its efforts at mitigating the pandemic to the investment made, be it in terms of equipment and services – estimated at approximately €6,000,000 – and contended that the GGH and the KGRH would not have benefitted to the same extent had they been under the direct control of the Government, since most investment would have been channelled to the MDH.

5.4.12 Aside from considerations relating to the COVID-19 pandemic, the NAO challenged the SHC's assertion that progress in terms of service delivery was registered, given that the benchmarking of performance by the MFH effectively commenced following the change of control of the concession by the SHC. The President SHC Malta contended that the SHC was gauging progress against its own performance year-on-year; however, also referred to the possible comparisons that could be drawn by the MFH against the metrics in use to assess performance at the MDH.

5.4.13 One final aspect highlighted by the President SHC Malta concerned quality and patient safety. The President SHC Malta referred to the structure of oversight designed to this effect, with committees and overarching committees that report to the executive teams in the hospitals deemed key to ensuring readiness for the Joint Commission International Accreditation System.

This process of accreditation is to be triggered once the hospital facilities are constructed. Another cog in the quality assurance framework regulating the hospitals was the QAB. The President SHC Malta referred to its tripartite representation – with the SHC, the Government and the QMUL all contributing towards its effective functioning – and its constant monitoring of KPIs and other important metrics as fundamental in ensuring service quality and patient safety.

5.4.14 The SHC contended that the failures of the concession were attributable to the way it was conceived. Compounding matters was that the concession was not restructured, and this therefore affected the SHC. Notwithstanding the adversity of operating an ill-conceived concession, the SHC maintained that significant efforts were expended for the benefit of service users. The General Counsel SHC International argued that the context of failure that characterised the award of the concession – despite that the SHC were extraneous to this process – overshadowed that achieved by the SHC, most notably, the construction of the Barts Medical School and the continuous service provided to patients. Elaborating in this respect, the General Counsel SHC International asserted that the SHC had invested significant funds into this concession, despite it being a loss-making undertaking to date. Complicating matters in this respect was that the concession was not bankable, with banks unwilling to finance the project.

5.4.15 Commenting on constraints to the improvement of public health services, the Prime Minister contended that the concession represented a significant culture change that still faced stiff resistance by those with vested interests. Nevertheless, the Prime Minister argued that the project had not yet started and therefore one could not consider the concession as a failure, for failure would imply that the project was implemented but had not succeeded. In this case, the project as envisaged had not yet been implemented.

5.4.16 In turn, the Minister for Health highlighted that the clinical services provided by the SHC remained to standard; however, he maintained that critical to this concession was the development of medical tourism. In this case, the Minister noted that the SHC was reluctant to pursue this model.

5.5 Health service delivery at the Gozo General Hospital

5.5.1 The HSDA and its subsequent addenda stipulated the service levels and requirements that were to be provided by the Concessionaire at the GGH. In terms of bed capacity, the GGH was to have 125 acute, 25 day and 200 long-term care beds. The NAO noted that the number of available acute beds cited in the activity report submitted in June 2018, that is, immediately after the transfer of the concession between the VGH and the SHC, was 108. Based on information provided by the MFH, with the SHC at the helm, the number of available acute beds as at December 2021 increased to 118. Another 80 beds at the GGH were intended for use in connection with the COVID-19 pandemic. Also available at the GGH, or through other satellite sites, were 10 day-care beds and 157 long-term care beds. Aside from the 125 acute general care beds, the Concessionaire was to provide 10 beds in an orthopaedic ward setting. As at 1 January 2020, these beds were made available by the SHC. However, the Consultant MFH noted that since the 10 orthopaedic beds were located in the orthopaedic ward that the Government had refurbished, rather than the SHC, these beds were not considered as fulfilling the orthopaedic bed requirement stipulated in the HSDA. Reflecting this understanding, the MFH did not pay the €600 per bed per day for acute care beds as stipulated in the HSDA for these beds, but adopted the cost of a medical bed at the MDH as a basis for payment, settling instead at a rate of €213 per bed per day.

5.5.2 A lack of progress in the provision of new or improved services was attributed by the MFH to the problems encountered by the SHC in engaging new staff. Citing the Emergency Department as an example, the MFH noted that the resignation of newly recruited staff and other difficulties in recruitment hampered progress. Likewise, resignations and delays in the replacement of personnel within the General Surgery and Orthopaedics Departments were also highlighted. To address these concerns, the MFH generally sought the assistance of the MDH to provide the required support at the GGH, despite the tension that existed between clinical elements at both hospitals. Nevertheless, the MFH implemented other measures to address staff shortages, citing a scheme of work that allowed for specialists to alternate between Malta and Gozo on a weekly basis, and the incentivisation of certain skill sets through bonus payments for services provided at the GGH. The MFH argued that improvements in the operations of the GGH were, in part, the consequence of the Ministry's efforts.

5.5.3 A similar stagnation in progress was noted in other services provided at the GGH. While the HSDA stipulated that surgical suite facilities were to be expanded to accommodate all local elective and emergency surgical requirements, the MFH acknowledged that no improvement in this respect had been registered. The HSDA established that the minimum charge payable by the Government to the Concessionaire was to include 3,000 hours of surgery annually. The MFH noted that surgical hours remained below this 3,000-hour capping, with 2,800 hours provided over the period under review. As a result, no further payment to the SHC was made. Notwithstanding this, the MFH informed the NAO that this method of calculation was replaced with one that considered the severity of operations, classified in terms of BUPA categories.[13] The MFH stated that this modification had no bearing on the payments due and that no additional payments were made since charges were still based on that applicable in the transition period.

5.5.4 An aspect of service where little progress was registered was the Urology Department. The HSDA provided that the Concessionaire was to ensure the availability of expert evaluation and treatment through the latest technologies and therapies, with the multidisciplinary collaboration of physicians across the system providing the best possible care. The NAO sought to determine whether, aside from the regular outpatient clinics and the minimal amount of minor and intermediate urology surgery, the SHC achieved this objective. According to the MFH, no significant improvement in standards were achieved by the SHC. In addition, a urology consultant based at the GGH was not yet recruited. In the case of the Obstetrics and Gynaecology Department, an element of progress was registered in that a resident specialist was deployed at the GGH. However, the HSDA required that the Concessionaire provide a 12-bed ward, a specialised obstetric surgery theatre and three obstetric delivery rooms with new and improved medical equipment and

[13] BUPA classifies all commonly performed surgical procedures into five categories, namely, minor, intermediate, major, major plus, and complex major.

trained staff. While the MFH conceded that a 12-bed ward was not required, since the current 10-bed ward only had an occupancy rate of 65 per cent, the Ministry noted that the specialised theatre, delivery rooms and staff had not been provided.

5.5.5 Another area where partial fulfilment of contractual obligations was met was in respect of respiratory medicine, for the MFH confirmed that the SHC had appointed a consultant who on average was carrying out one bronchoscopy a month. The MFH indicated that this was a new service. However, the HSDA stipulated that a respiratory ward was to be situated in the new wing of the GGH and was to be equipped with the latest medical and diagnostic equipment. Notwithstanding this requirement, the MFH stated that no respiratory ward was set up by the SHC. Also stalled was the construction of the long-term geriatric care and rehabilitation centre, which facilities were to be annexed to the current GGH premises. The MFH partly explained this delay in terms of the SHC's masterplan, which was yet to be finalised and which also stalled the building of the new acute hospital therefore works on the existing premises could not be undertaken. The post of resident geriatrician at the GGH was not filled and a call for applications was to be re-issued. Also affected by the delays in the finalisation of the SHC masterplan was the long-stay psychiatric ward. Notwithstanding this, the SHC engaged a consultant psychiatrist.

5.5.6 The HSDA also provided for the setting up of a Department of Neurology that was to include a team of specialists. The MFH informed the NAO that aside from the consultant neurologist who was engaged by the VGH, no other developments were registered and no timeframes were given as to when the new services were to commence. Additionally stipulated in the HSDA was that the new paediatric ward was to include a one- to two-bed child psychiatry facility within the ward. While the MFH confirmed that this objective was still contemplated, no progress had been achieved in its realisation as no physical space was available. A similar response was drawn from the MFH in relation to the acute psychiatry facility, with the Ministry indicating that the objective had not been achieved and that new timelines had not yet been determined. However, to satisfy demand, an agreement was entered into with the SHC to expand the 25-bed long-term psychiatry ward to 40 beds. Aside from this development, the other indication of progress was the appointment of a consultant.

5.5.7 Another aspect of healthcare at the GGH covered by the HSDA was that relating to rheumatology services, whereby the Concessionaire was to make available access to outpatient services and rheumatology specialists. In response to queries raised by the NAO, the MFH stated that under the VGH, a general medicine specialist provided a limited rheumatology service; however, patient access to this service was seriously curtailed by excessively long waiting times for new appointments. The situation did not improve when the concession was transferred to the SHC, with the MFH declaring that no improvement had been registered in rheumatology services. With respect to cardiology, although the HSDA dictated that the Concessionaire was to establish a comprehensive service, the MFH noted that despite the SHC's commitment to set up a cardiac catheter lab/angiography suite, this was not honoured. Instead, the SHC was providing a weekly service by a visiting cardiologist. Furthermore, the MFH indicated that the implantation of cardiac pacemakers was stopped on instruction of the Department of Cardiology at the MDH due to fears of possible bacterial contamination. As regards gastroenterology and endoscopy services, the HSDA necessitated investment in terms of new and upgraded facilities and medical equipment and the engagement of specialists. While the SHC indicated its intention to recruit a GGH-based gastroenterologist to provide relevant services, the MFH informed the NAO that none of these deliverables were achieved.

5.5.8 An improvement in service was also envisaged in other specialisations, namely dermatology, nephrology and endocrinology. The HSDA 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 the NAO, the MFH indicated that dermatology services and bimonthly clinics relating to sexual health were being provided by visiting specialists. Although the MFH noted that waiting times for these services increased, this was mainly attributable to delays caused by measures associated with COVID-19. Also stipulated in the HSDA was that the Concessionaire was to upgrade the nephrology and endocrinology service provided. According to the MFH, the SHC engaged a nephrologist who provided a monthly service at the GGH and a medical consultant to run an endocrinology clinic.

5.5.9 Of note to the NAO were concerns expressed by the MFH regarding the Emergency Department at the GGH. Cited in the HSDA was that the Concessionaire was to ensure a safe and efficient throughput of four hours for all patients. The MFH maintained that the Emergency Department remained the hospital's weakest link as it was severely understaffed in terms of the required qualified specialists, resulting from continual resignations and others opting for shorter working hours. In addition, the recruitment of staff bore poor results, compounded by the lengthy absences of engaged staff. Mitigating this situation was the enthusiasm of particular general practitioners and the support of a resident specialist and a trainee from the MDH's Emergency Department. With respect to the Intensive Care Unit, the SHC was to achieve certain outcomes, such as the reduction of the length of stay and mortality, and optimise pain and respiratory support management. While the MFH referred to the deployment of four anaesthetists at the GGH, the Ministry acknowledged that the results obtained were difficult to analyse statistically due to the small number of cases. The MFH conceded that improvement at the GGH was always curtailed by the fact that generally, its consultants preferred to transfer to the MDH for reasons of career advancement and the opportunity to improve their skills.

5.5.10 Aside from the provision of new services, the Concessionaire was also tasked with the undertaking of refurbishment and upgrading works to better support the demand for services and to house the new equipment to be procured, particularly in relation to the outpatient consultant rooms, which were deemed key in supporting outpatient activity. In response to queries raised by the NAO, the MFH stated that the masterplan was still subject to consultation with key stakeholders and had not yet been finalised. In addition, the MFH informed this Office that certain measures had to be taken to counteract the COVID-19 pandemic. The Ministry explained that outpatient services were transferred to the Barts Medical School, thereby allowing for the outpatient area to be converted into a COVID-19 ward. At a later stage, the outpatient area at the GGH was refurbished. Other outpatients services, in particular those relating to the Dental Department, saw no major upgrade made and no timeline within which such investment was to be realised was set. While the overall outpatient activity output was to increase by five per cent annually, and the MFH indicated that a seven to eight per cent increase had been registered, no documentation substantiating this improvement was provided.

5.5.11 In terms of the HSDA, the Concessionaire was to invest in modern technology in medical imaging. However, according to the MFH, no major investment in this area was made. Compounding matters was that a consultant radiologist and a resident specialist were urgently needed, further slowing progress. Progress was registered in other ancillary areas of the GGH, including the upgrading of the hospital's mortuary and the pharmacy. In addition, a second helicopter was procured to improve air ambulatory services and 10 of the envisaged 30 overnight rooms for doctors were provided. As for the staff cafeteria, the MFH informed this Office that the SHC had made arrangements with the QMUL to utilise the Barts Medical School cafeteria for this purpose, even though this was contrary to the provisions of the HSDA in that separate facilities were specified. The MFH indicated that the childcare centre was not built while the requirement to set up a Health NGO Resource and Coordination Centre was still under consideration by the MFH since an NGO coordination centre already existed in Gozo.

5.6 Health service delivery at the Karin Grech Rehabilitation Hospital and St Luke's Hospital

5.6.1 In respect of the KGRH and the SLH, the HSDA stipulated that the Concessionaire was to provide 320 beds for inpatient geriatrics and 80 rehabilitation beds for patients requiring intensive rehabilitation. 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 by the SHC. However, these beds were eventually used for purposes other than those originally intended, as they were utilised in efforts to respond to the COVID-19 pandemic. As for the rehabilitation beds, according to the Ministry, the SHC insisted that 250 rehabilitation beds were actually required at the KGRH, thereby exceeding the 80 beds originally contracted in the HSDA. The Government's consideration of this revision is captured in greater detail in the minutes of the PC (section 4.3 refers).

5.6.2 The HSDA imposed on the Concessionaire the obligation to provide an array of services relating to geriatric inpatient care. When under the management of the VGH, the MFH had insisted that it was essential for the provision of physiotherapy services to be extended to afternoons and weekends. Despite the Ministry's efforts, this did not materialise and discussions in this respect continued with the SHC. Based on its review of records of the QAB, the NAO established that this situation persisted until end 2021, the cut-off date of this Office's review. The reason why services were not extended as envisaged was attributed to issues with Unions. Compounding matters was the reluctance by the SHC to invest in these services until a bankable package of income was agreed on with the Government. Despite these setbacks, the NAO was informed that the Physiotherapy Department at the SLH was upgraded. The MFH also referred to improvements registered in relation to the OPU, noting an amelioration in services offered, efforts to gauge customer satisfaction and patient feedback, and better cooperation between the MDH and the KGRH in terms of patient follow-up.

5.6.3 As for the KGRH, the MFH noted that the SHC undertook some work in connection with the upgrading of the pool area and the setting up of two gyms. In addition, the SHC was to offer laboratory and imaging tests at the KGRH and the SLH and provide a pharmacy that addressed the requirements of both hospitals. Regarding the latter, the MFH noted that no common pharmacy was set up. Furthermore, the MFH indicated that the mortuary services at the MDH were being used instead of those of the SLH since these had not been upgraded.

5.6.4 The HSDA also stipulated that a Dermatology and Holistic Care Centre were to be established at the SLH; however, the MFH informed the NAO that these services were not operational. Moreover, the MFH stated that the SLH remained a derelict building that was not used for any clinical services other than physiotherapy and hydrotherapy, which facilities were refurbished by the SHC in response to Union pressure. Apart from this, the ancillary services envisaged were similarly not provided. The MFH further contended that the Ministry had to step in to eliminate any danger that the deteriorating SLH building was posing. Elaborating on this point, the MFH asserted that aside from the improvements arising from the SHC's designs, the rest of the site was abandoned.

5.7 Payments made by the Government to Steward Health Care

5.7.1 Essential in understanding the payments made by the Government to the SHC is cognisance that the concession – at the point of change of control from the VGH to the SHC and for the years under review in this audit – remained within the transition period, that is, a frame of reference set prior to the completion date. Characterising this period is the fact that the concession milestones were not achieved and therefore payments by the Government to the SHC were intended to maintain the existing levels of service, consistent with that delivered by it prior to the award of the concession.

5.7.2 The charges that the Government was to pay the Concessionaire were stipulated in the HSDA and its addenda. These comprised:

a. the minimum bed service and guarantee charged per bed per day for the GGH, the KGRH and the SLH and increased for additional beds requested by the Government above the minimum requirement;

b. €2,000,000 in respect of the dermatology outpatient centre at the SLH, which charge was to include 12 inpatient beds and a maximum of 27,500 outpatient visits;

c. €20 per patient visit at the holistic care centre at the SLH;

d. €1,200,000 annually for a period of 30 years as lease payments in respect of the Barts Medical School at the GGH;

e. €1,000,000 per year for a period of 30 years for use of air ambulatory services, capped at 200 airlifts annually; and

f. other costs related to additional services.

5.7.3 Indicated in the HSDA was the schedule of payments to be effected until the completion date was reached (Figure 52 refers). The payments due by the Government to the VGH in 2016 amounted to €51,000,000, exclusive of VAT. This figure was to be revised annually, augmented by the annual healthcare budget increase.

Figure 52 | Payments due by the Government to the Concessionaire during the transition period

	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

5.7.4 Furthermore, as from 1 June 2017, the amount payable by the Government was to be revised upwards by two per cent per annum. The two per cent annual increase was also applicable to the air ambulatory service charge. The SCA provided for a €3,000,000 concession fee payable by the Concessionaire to the Government over ten years, with the first instalment due one year from the effective date. This amount was to be offset against the amounts due by the Government to the Concessionaire.

5.7.5 A payroll charge was due by the Concessionaire to the Government for resources leased, which charge was to be offset against the fees due by the Government to the Concessionaire. The Addendum to the LSA dated 30 June 2017 stipulated that the payroll charge was to be capped at €32,234,637 and subject to a fixed two per cent increase per annum for the duration of the concession.

5.7.6 The NAO established that the total amounts invoiced by the VGH and the SHC for the period June 2016 to December 2018 amounted to €90,669,739, with payments of €87,306,261 made by the Government. Of the €90,669,739, €56,921,018 corresponded to amounts invoiced by the VGH between June 2016 and February 2018. Payments made by the Government during this period amounted to €54,636,798. Therefore, the amount invoiced by the SHC from February to December 2018 was €33,748,721, while payments by the Government were €32,669,463.

5.7.7 While Part 2 of the NAO's report focused on the payments made by the Government to the VGH and the SHC between 2016 and 2018, this Part relates to the period 2019 to 2021, wherein the concession was under the control of the SHC. During this period, the budgetary healthcare increase was set at six per cent per annum, with an additional annual two per cent increase provided as an inflation adjustment.

5.7.8 In 2019, the amount payable by the Government to the SHC with respect to the GGH, the air ambulatory services and the KGRH was €72,909,068. The dues payable by the SHC to the Government in respect of leased resources, amounting to €33,928,180, were offset against the amount payable to the SHC. As indicated in Figure 53, this resulted in a net amount payable by the Government to the SHC of €38,980,888 in 2019.

5.7.9 Evident in Figure 53 was that the revision to the charge payable to the SHC with respect to the GGH and the KGRH for 2019 did not include the budgetary adjustment. The NAO was informed that a settlement agreement was reached in February 2021, following which a budgetary increase set at six per cent per annum was retrospectively settled.

5.7.10 As stipulated in the HSDA, pro-rata charges for the concession fee, amounting to €300,000 annually, were to be offset against the amounts payable by the Government to the SHC. Other adjustments included a deduction of €703,328 in respect of Government resources transferred to the GGH, which cost was to be incurred by the SHC; an overpayment of €349,103 in KGRH salaries during 2018, which amount was to be deducted from the amounts due by the Government to the SHC; €4,305,719 payable to the SHC as settlement in respect of the LSA; and €1,450,000 payable by the Government to the SHC in respect of the OPU.

5.7.11 Considering the aforementioned adjustments, the amount due by the Government to the SHC in 2019 increased to €43,384,175 (Figure 53 refers). The NAO was provided with documentation by the MFH confirming that the payments made, inclusive of VAT, corresponded to this amount. This Office noted that the amount invoiced in 2019 amounted to €37,926,369. Corresponding invoices and receipts were made available.

5.7.12 With respect to 2020, the amount due by the Government to the SHC totalled €39,529,524. As was the case in 2019, no budgetary increase was allocated with respect to the charge payable by the Government for the GGH and the KGRH in 2020. This was paid in 2021 following entry into the settlement agreement. Similar to previous years, a pro-rata charge of €300,000 in respect of the concession fee was to be offset against the amount payable by the Government. In addition, an amount of €704,810 was reimbursed to the Government by the SHC in respect of the KGRH salaries. Quarterly charges of €362,500 in respect of the OPU were due to the SHC, amounting to a yearly total of €1,450,000. Moreover, during Q4 2019, charges relating to the lease of the Barts Medical School became due. The lease for 2020 was €1,429,500. Moreover, the MFH was charged €4,739,519 in respect of measures taken in response to the COVID-19 pandemic and €3,185,513 for the orthopaedic and rehabilitation beds. The reimbursement of special emergency charges, such as those charged in connection with the COVID-19 pandemic, were provided for in Clause 10 of the HSDA.

Figure 53 | Amounts charged to the Government by the SHC, 2019

	2019 (€)	
Amounts payable to the SHC		
GGH		
Charge	38,350,000	
Budgetary and inflation increase for 2017 (9%)	3,451,500	
Inflated charge	41,801,500	
Budgetary and inflation increase for 2018 (8.47%)	3,421,932	
Inflated charge	45,223,432	
Inflation increase for 2019 (2%)	447,417	
Inflated charge		45,670,849
Air ambulatory services		1,240,967
KGRH		
Charge	21,830,000	
Budgetary and inflation increase for 2017 (9%)	1,964,700	
Inflated charge	23,794,700	
Budgetary and inflation increase for 2018 (8.47%)	1,947,869	
Inflated charge	25,742,569	
Inflation increase for 2019 (2%)	254,683	
Inflated charge		25,997,252
Total charge payable to the SHC		**72,909,068**
Less amounts payable to the Government		
Reimbursement of salaries – GGH	20,126,284	
Reimbursement of salaries – KGRH	13,801,896	
Total charge payable to the Government		**33,928,180**
Net amount payable to the SHC		**38,980,888**
Net adjustments payable to the SHC		4,403,287
Total amount payable to the SHC		**43,384,175**

5.7.13 Adjusting for the above-mentioned expenses, the amount due by the Government to the SHC in 2020 was €49,329,245 (Figure 54 refers). Invoices corresponding to this disbursement were made available by the MFH. The NAO was provided with receipts amounting to a total of €48,699,245. While a difference between the amounts paid by the Government and receipts submitted was noted, the proximity between that paid (€49,329,245) and that receipted (€48,699,245) mitigated this concern.

Figure 54 | Amounts charged to the Government by the SHC, 2020

		2020 (€)
Amounts payable to the SHC		
GGH		
Charge	38,350,000	
Budgetary and inflation increase for 2017 (9%)	3,451,500	
Inflated charge	41,801,500	
Budgetary and inflation increase for 2018 (8.47%)	3,421,932	
Inflated charge	45,223,432	
Inflation increase for 2019 (2%)	767,000	
Inflated charge	45,990,432	
Inflation increase for 2020 (2%)	447,417	
Inflated charge		46,437,849
Air ambulatory services		**1,264,567**
KGRH		
Charge	21,830,000	
Budgetary and inflation increase for 2017 (9%)	1,964,700	
Inflated charge	23,794,700	
Budgetary and inflation increase for 2018 (8.47%)	1,947,869	
Inflated charge	25,742,569	
Inflation increase for 2019 (2%)	436,600	
Inflated charge	26,179,169	
Inflation increase for 2020 (2%)	254,683	
Inflated charge		26,433,852
Total charge payable to the SHC		**74,136,268**
Less amounts payable to the Government		
Reimbursement of salaries – GGH	20,528,810	
Reimbursement of salaries – KGRH	14,077,934	
Total charge payable to the Government		**(34,606,744)**
Net amount payable to the SHC		**39,529,524**
Net adjustments payable to the SHC		9,799,721
Total amount payable to the SHC		**49,329,245**

5.7.14 The charges due by the Government to the SHC in 2021 amounted to €50,449,488. Of note is a change in the method of calculation of the charge payable to the SHC. In essence, the annual revision to the charge was no longer to be calculated as a percentage increase of the base charge as adjusted by the budgetary increase, but was to incorporate the inflation increase. The revised method was applied by the MFH as from Q2 2021. Figure 55 reflects the total charges to Government for the year, with the amount payable in Q1 based on the old method and the rest of the year calculated with the revised method.

5.7.15 Similar to previous years, €300,000 was deducted, representing the pro-rata charge for the concession fee. In terms of payments made by the Government in 2021, the lease charged for the Barts Medical School amounted to €1,228,000, while the fee for the OPU was €1,450,000.

5.7.16 In addition, a claim relating to expenditure incurred by the SHC in connection with the COVID-19 pandemic was raised, which claim amounted to €869,659. During 2021, the settlement agreement in respect of the LSA was reached, with the parties agreeing that the Government was to pay the SHC €27,933,076. Regarding payments arising due to inflation increase, the Government paid the SHC €2,404,681. Furthermore, the Government paid the SHC €3,513,379 in respect of orthopaedic and rehabilitation beds made available and €441 as a reversal charge. Adjusting for these revisions resulted in an amount payable by the Government to the SHC of €87,548,722.

5.7.17 Invoices reviewed by the NAO determined that the MFH was invoiced for an amount of €65,069,681 by the SHC. This Office was provided with a list of payments made by the Ministry during 2021. These totalled €87,548,722 (Figure 55 refers). Notwithstanding various queries made by the NAO, not all receipts were provided in respect of payments made. This Office retrieved receipts relating to payments made in 2021 amounting to €51,076,044. Moreover, it was not always possible to reconcile the receipts provided with the invoices.

Figure 55 | Amounts charged to the Government by the SHC, 2021

		2021 (€)
Amounts payable to the SHC		
GGH		
Charge	38,350,000	
Budgetary and inflation increase for 2017 (9%)	3,451,500	
Inflated charge	41,801,500	
Budgetary and inflation increase for 2018 (8.47%)	3,510,923	
Inflated charge	45,312,423	
Budgetary and inflation increase for 2019 (8%)	2,912,275	
Inflated charge	48,224,699	
Budgetary and inflation increase for 2020 (8%)	3,129,917	
Inflated charge	51,354,616	
Budgetary and inflation increase for 2021 (8%)	2,468,060	
Inflated charge		53,822,676
Air ambulatory services		**1,288,167**
KGRH		
Charge	21,830,000	
Budgetary and inflation increase for 2017 (9%)	1,964,700	
Inflated charge	23,794,700	
Budgetary and inflation increase for 2018 (8.47%)	1,998,526	
Inflated charge	25,793,226	
Budgetary and inflation increase for 2019 (8%)	1,657,757	
Inflated charge	27,450,982	
Budgetary and inflation increase for 2020 (8%)	1,781,645	
Inflated charge	29,232,627	
Budgetary and inflation increase for 2021 (8%)	1,404,896	
Inflated charge		30,637,523
Total charge payable to the SHC		**85,748,366**
Less amounts payable to the Government		
Reimbursement of salaries – GGH	20,939,386	
Reimbursement of salaries – KGRH	14,359,493	
Total charge payable to the Government		**(35,298,879)**
Net amount payable to the SHC		**50,449,488**
Net adjustments payable to the SHC		37,099,234
Total amount payable to the SHC		**87,548,722**

5.7.18 While the total payment made by the Government to the SHC in 2021 was of €87,548,722, the NAO noted that this amount was inflated by the €27,933,076 arising out of the settlement agreement. To this end, this Office sought to apportion this payment according to the year in which the payroll expense was incurred, in this case 2019 and 2020. Another factor that was taken into consideration when undertaking this analysis was the reallocation of transactions based on when these were accrued. One must also note the extraordinary expenditure incurred by the Government by 2020 in response to the COVID-19 pandemic, which resulted in additional payments to the SHC amounting to €5,609,178. Adjusting for these considerations, a truer and more balanced account of amounts paid by the Government to the Concessionaire between 2016 and 2021 is provided in Figure 56. Over this period the Government paid the VGH and the SHC a total of €267,568,404. Despite that the concession remains within the transition period, the amount due annually by the Government to the SHC has increased substantially, ranging from €56,992,698 to €62,947,574 between 2019 and 2021.

Figure 56 | Amounts paid and due by the Government to the Concessionaire, 2016-2021

Year	Concessionaire	Amount paid (€)	Amount due (€)
2016 (June – December)	VGH	16,022,406	15,847,406
2017	VGH	33,555,813	31,626,943
2018 (January – February)	VGH	3,108,998	5,212,869
2018 (March – December)	SHC	34,619,043	33,915,715
2019	SHC	43,384,175	56,992,698
2020	SHC	49,329,245	62,947,574
2021	SHC	87,548,722	61,025,200
Total	**VGH/SHC**	**267,568,404**	**267,568,404**

5.7.19 The €267,568,404 does not reflect the overall cost to Government for providing public health services at the GGH, the KGRH and the SLH, for this amount was exclusive of salaries paid directly by the Government to public employees made available to the Concessionaire. Salaries paid during this period accounted for a disbursement of €188,510,970. Therefore, between June 2016 till end 2021, the total cost incurred by the Government with respect to the GGH, the KGRH and the SLH was €456,079,372 (Figure 57 refers).

Figure 57 | Total cost to Government of the GGH, the KGRH and the SLH, 2016-2021

Year	Concessionaire	Payment to Concessionaire(€)	Salaries paid by Government(€)	Total cost of GGH, KGRH and SLH (€)
2016 (June – December)	VGH	16,022,406	18,803,538	34,825,944
2017	VGH	33,555,813	32,610,707	66,166,520
2018 (January – February)	VGH	3,108,998	4,556,565	7,665,563
2018 (March – Decemeber)	SHC	34,619,043	28,706,357	63,325,400
2019	SHC	43,384,175	33,928,180	77,312,355
2020	SHC	49,329,245	34,606,744	83,935,989
2021	SHC	87,548,722	35,298,879	122,847,601
Total	**VGH/SHC**	**267,568,404**	**188,510,970**	**456,079,372**

Chapter 6| Implementation of the Labour Supply Agreement

6.1 Overview of the Labour Supply Agreement

6.1.1 On 8 January 2016, the Government, represented by the Minister for Energy and Health, and VGH Management Ltd, represented by the Director VGH, entered into the LSA. Through this Agreement, the Government agreed to supply VGH Management Ltd with 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.

6.1.2 The Government was to supply VGH Management Ltd with the staff indicated in a list of resources, which list had not yet been compiled at the point of entry into the LSA. Furthermore, the LSA stipulated that the Government was to promptly provide a replacement resource to address any shortfall in the number of resources supplied to the Concessionaire to ensure that this did not fall below that set in the list of resources at any given time. 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.

6.1.3 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.

6.1.4 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 seconded 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 employer. 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 the assigned employees was consequently not determined. 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 any additional charges.

6.1.5 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 the Director VGH, 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. Also stipulated in the Side Letter was that any charges over 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.

6.1.6 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 an additional €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.

6.1.7 The Side Letters to the Transaction Agreements dated 19 May 2016 and 15 September 2016 were incorporated into and superseded by an Addendum to the LSA entered into on 30 June 2017. The parties to this Addendum were the Government, represented by the Minister for Tourism, and VGH Management Ltd, represented by the Director VGH. The Addendum to the LSA was to be in force with retrospective effect from 1 June 2016. Critical contractual requirements, absent in previous LSA-related agreements, 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 these resources, now set at €32,234,637. This charge was subject to a fixed annual two per cent increase during the concession term.

6.1.8 While the LSA, was endorsed by Cabinet on 27 October 2015, the Addendum, 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.

6.1.9 VGH Management Ltd was responsible for the implementation of the LSA; however, the acquisition of VGH Ltd, its parent company, by SHC International Ltd implied that control over the LSA also shifted accordingly. Hereunder is an account of developments relating to the implementation by VGH Management Ltd, later renamed Steward Malta Management Ltd, of its obligations emanating from the LSA. This report covers the period from February 2018 till December 2021, resuming that reported on in Part 2.

6.2 Disputes arising between the Concessionaire and Government

6.2.1 The NAO ascertained that the annual capped amount of €32,234,637 payable by the SHC for the 1,536 resources made available by the Government was offset against other payments due by Government to the SHC throughout the period under review. Notwithstanding this, uncertainty and confusion persisted regarding the number and cost of resources made available, which arose from inaccurate information provided in the RfP that effectively capped the Concessionaire's labour costs and subsequently constrained the Government to assume adverse variances. This was aggravated following entry into the Addendum to the LSA, which set the €32,234,637 capping for the 1,536 resources that would prove to be underestimated in financial terms and inaccurate in headcount. This situation gave rise to several disputes between the Government and the SHC, some of which were still unresolved at the time of reporting.

6.2.2 Key to understanding the cause of the discrepancies in terms of the number of resources to be provided and the corresponding cost, was the report drawn up by RSM Malta, dated 16 September 2016. This report provided a variance analysis between the headcount and associated costs as set in the RfP and the projected headcount and costs established at handover by the Government to the VGH.[14]

6.2.3 According to the RSM Malta report, were one to consider 1,536 resources as cited in the Addendum to the LSA, the projected costs of such resources at handover equated to an approximate €42,000,000, as opposed to the €32,234,637 capped fee to be paid to the Government by the VGH, which in effect corresponded to the cost of 1,240 resources. 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, which resulted in the Government providing resources whose value far exceed that paid for by the VGH.

6.2.4 These discrepancies resulted in disputes being lodged by the SHC with respect to the settlement of invoices raised by the Concessionaire for costs incurred for replacement resources. The basis of these claims was that the Government was not honouring its obligation to provide the resources stipulated in terms of the LSA and its Addendum. This resulted in the SHC claiming reimbursement for costs incurred for replacements of resources not provided by the Government.

6.2.5 The LSA stipulated that 'Government agrees and undertakes to supply the Concessionaire at all times during the concession period with the equivalent number of resources as indicated in the list of resources. Government undertakes to promptly and without delay provide a replacement resource to cure any shortfall in the number of resources supplied to the Concessionaire and shall not allow for the number of resources supplied to the Concessionaire to be less than the number of resources indicated in the list of resources at any given time during the concession period.' Moreover, stated in the Agreement was that '… the Concessionaire will pay Government the equivalent of any monthly basic salary and any applicable allowances and bonuses of every resources leased by Government to the Concessionaire … Provided that the wages and/or salaries of Concessionaire's staff engaged by the Concessionaire in terms of … this Agreement in excess of the value of the charges, will be borne in their entirety by Government …'.

6.2.6 The first invoice presented by the SHC in March 2018 related to staff movements for the period June 2016 to February 2017 and amounted to €3,832,122. This invoice was contested by the

[14] Further information regarding the RSM report may be obtained by referring to section 6.4 of Part 2 of this audit published in December 2021.

MFH for several reasons, namely, discrepancies in the list of resources, the lack of supporting documentation provided, and that the invoice was based on estimates of wages rather than actuals. The MFH agreed to settle €468,645 of this invoice, with the outstanding balance of €3,363,477 remaining a contentious issue with claims and counterclaims exchanged between the Government and the SHC. Intending to resolve this impasse, the parties agreed to refer the matter for mediation. Of note to the NAO was that, on presenting the documentation for the mediation process, the SHC's claim of €3,832,122 was increased to €8,000,000.

6.2.7 The Government acknowledged the basis for the claim made considering its contractual obligations to reimburse the SHC for the costs of replacement resources. In this context, the Government appointed Grant Thornton as an independent auditor to verify basic payroll data to assist in the quantification of any potential reimbursement due to the SHC for the resources directly employed as replacement resources for the period June 2017 to 2018. The report by Grant Thornton established the reimbursement payable by the Government as €4,866,431, which was settled in April 2019. In submissions made to the NAO, the MFH indicated that the Government had agreed to pay the amount as established by Grant Thornton with the understanding that the payment was to be in full and final settlement of all costs incurred for the replacement of resources between 2017 and 2018.

6.2.8 Following this settlement, the SHC further contested that it had only been reimbursed for the replaced resources employed between 2016 and 2018, and that other employee-related costs had been incurred, including costs emanating from employee movements such as transfers and terminations, which also required reimbursement by the Government. To this end, the SHC issued another invoice in 2020 amounting to €20,266,868, claiming additional costs incurred during the period 2016 to 2020. The Advisor MFH was tasked with verifying this claim by the MFH.

6.2.9 The MFH also sought the advice of the State Advocate on the matter, seeking direction on the possible referral for mediation proceedings. The advice sourced was brought to the attention of Cabinet by the Minister for Health and the Minister for Finance and Employment through a memorandum submitted on 15 February 2021. This memorandum was comprehensively reported on in paragraphs 3.8.49 to 3.8.64. In sum, Cabinet was requested to authorise the drawing up of a settlement agreement by the State Advocate, which was to specify the amounts to be paid by the Government in respect of the SHC's claims. Subject to the endorsement of the SHC, the Government was to pay a sum exceeding €5,000,000 as settlement of the claim related to the healthcare budget increase under the HSDA, and a sum exceeding €20,000,000 as settlement of the claim related to the LSA. Cabinet approved the request put forward to it.

6.2.10 A Settlement Agreement was entered into on 19 February 2021 between the Government, represented by the PS MFH, and Steward Malta Ltd, Steward Malta Assets Ltd and Steward Malta Management Ltd, all represented by the CEO SHC International. The Settlement Agreement confirmed that the Government agreed to settle the claims arising out of or connected to the LSA and the HSDA in favour of the SHC. The agreed settlement sum amounted to €25,360,388, of which €4,972,112 related to the healthcare budget increase for 2020, €19,848,855 related to the cost for replacement resources for 2020, and €539,421 accounted for interest accrued on the settlement amounts (Figure 58 refers).

Figure 58 | Government settlement of claims, February 2021

Details	Government settlement (€)
Healthcare budget increase	4,972,112
Accrued interest on healthcare budget increase	130,661
LSA adjustment for replacement resources	19,848,855
Accrued interest on LSA adjustment	408,760
Total	**25,360,388**

6.2.11 Acknowledged in the Settlement Agreement was that €7,857,068 had already been settled by the Government in relation to the settlement sum prior to the execution of this Agreement. The remaining balance due, amounting to €17,503,320, was to be settled by the Government in two equal payments of €8,751,660 on 22 February 2021 and 1 March 2021.

6.2.12 Further stated in the Settlement Agreement was that payment would be in full and final settlement of the claims, with each party renouncing all rights and interests in respect of the settled claim, including the right to initiate any complaint, demand, action, suit, or other proceedings concerning this claim. Based on correspondence submitted by the MFH, the NAO confirmed that the amount of €7,857,068 was paid by the Government on 2 November 2020, while the two payments of €8,751,661 were settled on 22 February 2021 and 25 February 2021. The Agreement superseded all previous agreements with respect to the settled claims, and clearly indicated that this settlement did not include amounts in connection with claims relating to the Barts Medical School, improvements on the sites, additional beds and COVID-19.

6.2.13 The Settlement Agreement covered additional payments arising up to end 2020. Applying the advice of the State Advocate post 2020, the MFH effected a payment of €2,572,688 in May 2021 in relation to the LSA adjustment corresponding to Q1 2021. Correspondence reviewed by the NAO indicated that the SHC submitted invoices to the MFH corresponding to Q2 (€2,289,127), Q3 (€2,223,159) and Q4 2021 (€2,136,266) on 5 July 2021, 7 October 2021 and 30 December 2021, respectively, totalling €6,648,552.

6.2.14 As at April 2022, these claims remained outstanding due to a dispute between the parties relating to access to information by the MFH required to verify the claimed amounts. The MFH requested information relating to the list of resources that corresponded to the headcount for each FS5 provided by the SHC, together with the corresponding financial value for each resource and the provision of FS3s to support the claims. The SHC contested that requested by the MFH, arguing that the provision of such information was sensitive to privacy, national and European data protection law. In addition, the SHC maintained that the Government had, until Q1 2021, accepted to settle claims through the reconciliation of the FS5 returns, implying that this information was sufficient for settlement purposes. Furthermore, the SHC argued that the advice provided by the State Advocate did not contemplate or require the provision of additional employment data to be provided to the MFH. Matters continued to escalate between the parties in subsequent exchanges made. In correspondence dated 29 March 2022, the SHC claimed that the MFH's demands for further information to settle payment were beyond what was required to confirm the LSA payments due, were at times contradictory and therefore reflective of the intention to delay or obstruct payment in the context of a wider strategy to damage the SHC's contractual rights under the LSA and related agreements.

6.2.15 The MFH proposed that the SHC seek guidance from the Data Protection Commissioner and the Ministry indicated its willingness to accept any safeguards deemed necessary to ensure confidentiality. To this end, the MFH communicated directly with the Data Protection Commissioner, requesting guidance in this regard. The Data Protection Commissioner advised that the MFH had sufficient grounds to process the requested personal data for the purpose of ensuring overall accountability in the disbursement of public funds and to guarantee financial responsibility, particularly in light of the national laws and regulations to which it was subject.

6.3 Other Labour Supply Agreement-related issues

Transferred resources

6.3.1 The LSA allowed for the SHC to engage in direct employment any of the resources leased to it by the Government. The Agreement established a procedure that was to be adhered to when exercising this mechanism, whereby an obligation to seek and obtain the Government's consent was imposed on the resource to be transferred. Queried as to whether the SHC directly employed any resources within the period under review and whether consent to this effect was provided, the MFH indicated that the Ministry had no visibility in this respect. Considering the LSA requirement for the Government to grant its consent for transferred resources, it is unclear whether transfers had occurred without the Government's approval or whether no transfers occurred during the period under review.

6.3.2 Further stipulated in the LSA was that transferred resources could request to return to direct employment with the Government. The MFH informed the NAO that two resources, previously transferred to the direct employment of the Concessionaire and considered as being on unpaid leave for the duration of their direct employment with the Concessionaire, had reverted to Government employment in 2021.

Removal of resources

6.3.3 Another aspect regulated by the LSA was the removal and/or replacement of resources on request by the Concessionaire on evidence of serious and justifiable cause. The MFH informed the NAO that two resources that had been leased by the Government to the SHC were in the process of being removed from their positions. This Office was informed that the cases were under the review of the Public Service Commission.

Chapter 7| Implementation of the Emphyteutical Deed

7.1 Overview of the Emphyteutical Deed

7.1.1 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 KGRH and the SLH; and the Director VGH as Director VGH Assets Ltd, entered into the Emphyteutical Deed. By virtue of the Transfer of Rights and Liabilities of the Commissioner of Land Order (Subsidiary Legislation 169.01) the MIP Ltd was authorised to dispose of the sites listed in the Schedule thereto in terms of the Disposal of Government Land Act (Chapter 268). The powers on the land transferred through the Emphyteutical Deed were assigned to MIP Ltd on 8 March 2016.

7.1.2 The granting by emphyteusis of the sites at the GGH, the KGRH and the SLH 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, refurbishment and upgrading of the GGH, and the refurbishment and upgrading of the KGRH and the SLH.

7.1.3 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 GGH, the KGRH and the SLH, in aggregate having a superficial area of 135,282 square metres. In terms of the Deed, 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 GGH and the KGRH sites rested with the Government, that for the SLH site rested with the VGH. Nonetheless, the right to extend the emphyteutical title over the SLH was tied to the obligation imposed on VGH Assets Ltd to use the site solely for medical purposes. The annual ground rent for the three 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.

7.1.4 On 16 February 2018, SHC International Ltd acquired VGH Ltd and its subsidiaries including VGH Assets Ltd, the grantee on the Emphyteutical Deed. Shortly after, on 10 April 2018, VGH Assets Ltd changed its name to Steward Malta Assets Ltd. Nonetheless, this change in company name did not alter any of the provisions of the Emphyteutical Deed, which continued to apply. Hereunder is an account of matters relating to the emphyteusis assigned by MIP Ltd in respect of the sites at the GGH, the KGRH and the SLH. This resumes from February 2018, the cut-off of the NAO's previous report on the matter, until December 2021, that is, the period covered by this report.

7.2 On the transfer of the utile dominium

7.2.1 The NAO sought to determine whether the change in shareholding of VGH Ltd, the holding company of VGH Assets Ltd, had any implications on or necessitated any revisions to the Emphyteutical Deed. The Deed allowed for the transfer of the temporary utile dominium of the sites by the grantee, that is, VGH Assets Ltd. In effect, the grantee had the right to transfer, assign, dispose and alienate the sites or any part thereof under any title, provided that this was allocated to a third party of good standing and that prior written authorisation was obtained from the grantor, in this case, MIP Ltd. The Deed further provided that a written request for such authorisation was to reach the grantor by not later than three months before the intended date of transfer and had to specify all the details and information that the grantor could require to be able to consider the request for its authorisation.

7.2.2 The NAO also established that a change in control of the grantee was further regulated by the Emphyteutical Deed, which stipulated that, "The Grantor acknowledges, agrees and accepts that the transfer, assignment, disposal and/or alienation of the Sites or any part thereof under any title whatsoever, or of any right, real or otherwise, connected therewith, to a group company of the Grantee shall not constitute a transfer, assignment, disposal and/or alienation in terms of this Emphyteutical Deed and therefore the Grantee is not required to obtain a prior authorisation from the Grantor; So however that a change in the person or persons controlling the Grantee (not consisting of the creation of a security interest over the shares in issue of the Grantee or a parent of the Grantee in favour of the Primary Lender(s)) shall require the prior written consent of the Grantor." In this case, the Deed did not impose any time limitation for the submission of a request for consent. No further information or definition was specified in the Deed, including what constituted 'control'.

7.2.3 The NAO sought to establish whether the change in the shareholding of VGH Ltd – the parent company of VGH Assets Ltd – from Bluestone Investments Malta Ltd to SHC International Ltd was tantamount to a transfer of the sites to an unrelated third party, and consequently a change in the person or persons controlling the grantee, or whether this could be regarded as an intra-group transfer. Adopting a restricted interpretation, whereby control is understood as meaning the direct control in the grantee, the sale of the shares did not constitute a change of control since the grantee effectively remained the same. Therefore, this did not trigger the requirement for consent to be obtained, for VGH Assets Ltd remained directly controlled by VGH Ltd. Nonetheless, one could argue that the change in the shareholding of VGH Ltd was tantamount to a change in the person or persons controlling the grantee as contemplated in the Emphyteutical Deed. This understanding is based on the fact that the transfer of shares of VGH Ltd resulted in a change in the UBO of VGH Assets Ltd and therefore did not qualify as an intra-group transfer, but as a transfer between third parties. Consequently, the prior authorisation of the grantor of the emphyteusis was required.

7.2.4 Following queries by the NAO as to whether Government sanction was sought, MIP Ltd referred to correspondence submitted by VGH Ltd on 27 December 2017, wherein approval for the sale by Bluestone Investments Malta Ltd of its shareholding in VGH Ltd to SHC International Ltd was sought. The relevance of this request in terms of the Emphyteutical Deed was that VGH Ltd was the shareholder of VGH Assets Ltd, that is, the grantee on the Deed. On 3 January 2018, MIP Ltd provided its consent for the sale of the shares. According to MIP Ltd, this satisfied the provisions of the Emphyteutical Deed relating to a change in control of the grantee and fulfilled the requirement for the grantee to secure the consent of the grantor.

7.2.5 Aside from the change of control referred to in the preceding paragraph, the NAO ascertained that, on 12 May 2020, the entire share capital of the Maltese-registered SHC International Ltd was sold by SHC International Holdings Ltd to Cordiant Healthcare Services KSA SL, companies registered in the United Kingdom and Spain, respectively. Further information on this matter is provided in section 8.1 of this report. The relevance of this sale and purchase of shares was that Steward Healthcare International Ltd was the parent company of Steward Malta Ltd, which in turn was the parent company of Steward Malta Assets Ltd, the signatory to the Emphyteutical Deed. The NAO sought to establish whether this sale and purchase of shares was brought to the attention of INDIS Malta Ltd (previously MIP Ltd) in terms of the provisions stipulated in the Emphyteutical Deed regulating the transferability of the temporary utile dominium of the sites by the grantee. Despite requests by the NAO to INDIS Malta Ltd as to whether this matter was brought to its attention and what action was taken, no reply was forthcoming. Regardless, an element of doubt persists in terms of whether the sale and purchase of shares was to be considered as a transaction between third parties or an intra-group transfer. This doubt stems from the fact that the UBO of SHC International Ltd changed following the transfer of shares and the lacuna in the Emphyteutical Deed as to what constituted 'control'. Nevertheless, irrespective of the interpretation assigned, the NAO concedes that no specific consequence for a breach relating to the requirement to obtain consent was contemplated in the Emphyteutical Deed. Moreover, such breach was not listed among the events of default permitting termination in the SCA.

7.2.6 Also stipulated in the Emphyteutical Deed was that, whenever a transfer occurred, unless it was an intra-group transfer, a laudemium[15] was to be paid by the party assigned the emphyteusis to the grantor. For the purposes of the Emphyteutical Deed, an intra-group transfer was defined as a transfer to a group company of the grantee. The laudemium payment was to be equivalent to one year's ground rent of the immovable property, in this case amounting to €525,000. The laudemium was due to the grantor immediately on the publication of the relative deed of transfer, and this under the pain of nullity of the said deed of transfer. The grantor was to also appear on the deed of transfer for the purpose of recognising the assignee of the immovable property and to receive the laudemium due.

7.2.7 The review by the NAO of statements relating to payments made by the grantee to MIP Ltd indicated that no laudemium was paid following the change in control of VGH Assets Ltd. Queried by this Office as to the reason for the non-payment of a laudemium, INDIS Malta Ltd maintained

[15] A laudemium is a recognition fee that is paid by the new emphyteuta when acquiring the emphyteusis. This is ordinarily equivalent to one year of ground rent.

that despite the share transfer in the holding company in favour of the SHC, the emphyteuta remained the original grantee – albeit under a different name – and therefore obligations assumed by VGH Assets Ltd persisted. It was in this context that this Office understood that no deed of transfer was entered into. Nonetheless, the NAO contends that the position adopted by MIP Ltd in treating the transfer of the temporary utile dominium of the sites as an intra-group transfer was erroneous since the transfer resulted in a change in the UBO and therefore a laudemium was due; however, this provision was not enforced by the Government.

7.2.8 The Emphyteutical Deed also provided for the submission of notes of privilege in favour of the Government in warranty of the emphyteutical obligations of the grantee. INDIS Malta Ltd stated that it was pertinent to note that the privilege was attached to the immovable property. Elaborating in this respect, INDIS Malta Ltd contended that the concession was made to VGH Assets Ltd, which at the time was fully owned by VGH Ltd. INDIS Malta Ltd referred to public records held by the MBR, wherein no share transfers were registered in relation to the grantee. According to INDIS Malta Ltd, the company name of the grantee was changed to Steward Malta Assets Ltd by extraordinary resolution of the shareholders on 10 April 2018. Given that the grantee remained unchanged, in the NAO's understanding, the notes of privilege submitted by VGH Assets Ltd continued to apply. Nonetheless, this Office maintains that a note of the change in the name of the grantee, from VGH Assets Ltd to Steward Malta Management Ltd, ought to have been submitted to the Public Registry to facilitate searches.

7.3 Site vacation by third parties

7.3.1 One of the obligations of Government emanating from the Emphyteutical Deed was the granting of the vacant possession of the sites to the Concessionaire. The NAO sought to establish whether this requirement was met. Requests for information were submitted to INDIS Malta Ltd and the MFH.

7.3.2 As regards the vacation of the Blood Bank, INDIS Malta Ltd indicated that a government-owned site administered by it at the San Gwann Industrial Estate was earmarked for eventual allocation to the Blood Bank. Responsibility for the administration of this designated site was transferred to the Lands Authority pursuant to the Government Lands Act (Chapter 573) so that the necessary procedures for allocation could be effected. Nevertheless, INDIS Malta Ltd noted that, as at August 2022, the Blood Bank was still operating from the SLH site and was not privy to developments between the Lands Authority and the Blood Bank. Furthermore, INDIS Malta Ltd informed the NAO that the Child Development Assessment Unit and the Detox Centre – Substance Misuse Out-patients Unit still occupied their premises within the SLH precinct. That stated by INDIS Malta Ltd was corroborated by the MFH. An element of context to this situation was provided by the MFH, in that the Ministry contended that it made no sense for the Government to incur lease expenditure for new facilities for these health services since no works were undertaken at the SLH site.

7.3.3 Another site within the SLH premises that was to be vacated was the property occupied by Malta Enterprise. It must be noted that INDIS Malta Ltd also occupied parts of this property when Government entered into the Emphyteutical Deed. Following entry into the Deed, INDIS Malta Ltd vacated the building; however, Malta Enterprise was still occupying parts of the property. In the context of ongoing discussions with the Government, in 2021, the SHC claimed that the rent received by INDIS Malta Ltd from Malta Enterprise should have been received by the SHC in its capacity as emphyteuta. INDIS Malta Ltd informed the NAO that this remained pending. The matter was also referred to the MFH. The Ministry confirmed that Malta Enterprise did not vacate the site and referred to the fact that the SHC did not secure the required financing for works at the SLH; therefore, the site was not vacated.

7.3.4 Similar provisions regarding the vacation of the sites applied to the Administration Building at the GGH. The MFH informed the NAO that this building was initially occupied by the Ministry for Gozo. In turn, INDIS Malta Ltd indicated that the premises were later vacated and were now in use by the SHC.

7.3.5 The Emphyteutical Deed also referred to the vacation of any and all other parts of the sites used and/or occupied by third parties. Queried in this respect, INDIS Malta Ltd informed the NAO that no requests were made by the SHC in this regard.

7.4 Transfer of sites

7.4.1 The Emphyteutical Deed for the transfer of the sites at the SLH, the KGRH and the GGH allowed the grantee to encumber the Sites in favour of persons or entities providing debt funding and other credit facilities under one of the financing arrangements by the creation of security interests, and/or hypothecary guarantees. Similarly, it was permissible for the emphyteuta to create any encumbrance or burden to allow it 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. The NAO enquired with INDIS Malta Ltd whether the SHC had made any other encumbrances on the sites other than the general hypothec made by the VGH in favour of Agribank plc; however, at the time of reporting, no reply was submitted.

7.4.2 As regards the general hypothec in favour of Agribank plc, INDIS Malta Ltd indicated that the obligations assumed by VGH Assets Ltd still stood for, despite the share transfer in its holding company, the Grantee remained the same, albeit now Steward Assets Ltd. By way of background, in 2017, MIP Ltd (the precursor of INDIS Malta Ltd) 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.

7.5 Ground rent payments

7.5.1 The NAO sought to verify whether payments were made by the SHC in accordance with the conditions stipulated in the Emphyteutical Deed. Information on ground rent payments due for the GGH, the KGRH and the SLH was sought from INDIS Malta Ltd. Stipulated in the Deed was that ground rent payments were to be due and paid on 22 March of each year, one year in arrears. The NAO noted that invoices corresponding to the period 2018/2019 were issued in April 2019, therefore post the due date, consequently delaying payment. This shortcoming in the delay of issuing invoices was rectified in subsequent years. Notwithstanding this, the NAO observed that payments by the SHC were consistently made after the 22 March deadline. While the amounts due for the periods 2018/2019, 2019/2020 and 2020/2021 corresponding to the three sites were settled, that due for 2021/2022 remained pending. The balance due as at August 2022 was €619,500 (Figure 59 refers).

Figure 59 | Ground rent payments

Site	Period		Invoice	Payment	Amount	Amount
	From	To	date	date	invoiced (€)	paid (€)
GGH	22/03/2018	21/03/2019	10/04/2019	22/06/2019	184,965	184,965
GGH	22/03/2019	21/03/2020	03/02/2020	27/04/2020	184,965	184,965
GGH	22/03/2020	21/03/2021	29/01/2021	15/04/2021	184,965	184,965
GGH	22/03/2021	21/03/2022	31/01/2022	-	184,965	0
KGRH	22/03/2018	21/03/2019	10/04/2019	22/06/2019	69,693	69,693
KGRH	22/03/2019	21/03/2020	03/02/2020	30/04/2020	69,693	69,693
KGRH	22/03/2020	21/03/2021	29/01/2021	15/04/2021	69,693	69,693
KGRH	22/03/2021	21/03/2022	31/01/2022	-	69,693	0
SLH	22/03/2018	21/03/2019	10/04/2019	22/06/2019	364,842	364,842
SLH	22/03/2019	21/03/2020	03/02/2020	18/06/2020	364,842	364,842
SLH	22/03/2020	21/03/2021	29/01/2021	15/04/2021	364,842	364,842
SLH	22/03/2021	21/03/2022	31/01/2022	-	364,842	0

Note | Payments made with respect to the GGH and the SLH corresponding to the period 22/03/2019 to 21/03/2020 were staggered. The date presented in the figure corresponds to when the final payment was made.

7.5.2 The Emphyteutical Deed provides limited recourse to the grantor when ground rent payments fall in arrears. The Deed stipulates that the grantor could terminate the Deed if the grantee owed ground rent equivalent to the amount payable for three yearly payments of ground rent.

Chapter 8| Matters relating to Steward Health Care's ownership and financials

8.0.1 As part of the NAO's audit of the transfer of the concession to the SHC, this Office sought to review the Concessionaire's available audited financial statements for the years under review, namely, 2018 to 2021. The information reviewed by the NAO in this respect was sourced from the MBR.

8.0.2 The NAO's analysis focused on the financial statements submitted by Steward Malta Ltd, Steward Malta Assets Ltd, Steward Malta Management Ltd, Steward Malta Personnel Ltd, SHC International Ltd, SHC International (Malta) Ltd and MTrace plc. The relationship between these companies is presented in Figure 60. As at June 2022, the financial statements submitted by Steward Malta Ltd, Steward Malta Assets Ltd and Steward Malta Management Ltd corresponded to 2018, 2019 and 2020, while financial information relating to Steward Malta Personnel Ltd, SHC International Ltd and SHC International (Malta) Ltd was only available for financial years 2018 and 2019. With respect to MTrace plc, the financial statements available corresponded to the financial year 2019.

Figure 60 | Corporate structure of the Maltese-registered Steward companies, 2018-2022

8.0.3 Aside from the review of the financial statements corresponding to the locally registered Steward related companies, the NAO sought to determine whether changes to the corporate structure behind the concession were effected during the period under review. This Office established that several changes were registered throughout this period, which changes are captured in the ensuing section.

8.1 Changes in the corporate structure behind the concession

8.1.1 The transfer of shares in VGH Ltd from Bluestone Investments Malta Ltd to SHC International Ltd in February 2018 was a key development in terms of the ownership of the concession. The NAO sought to ascertain whether other important changes in ownership occurred during the period under review. The period of interest ranged from 2018 to 2021; however, when necessary, the NAO extended its scope to capture salient developments.

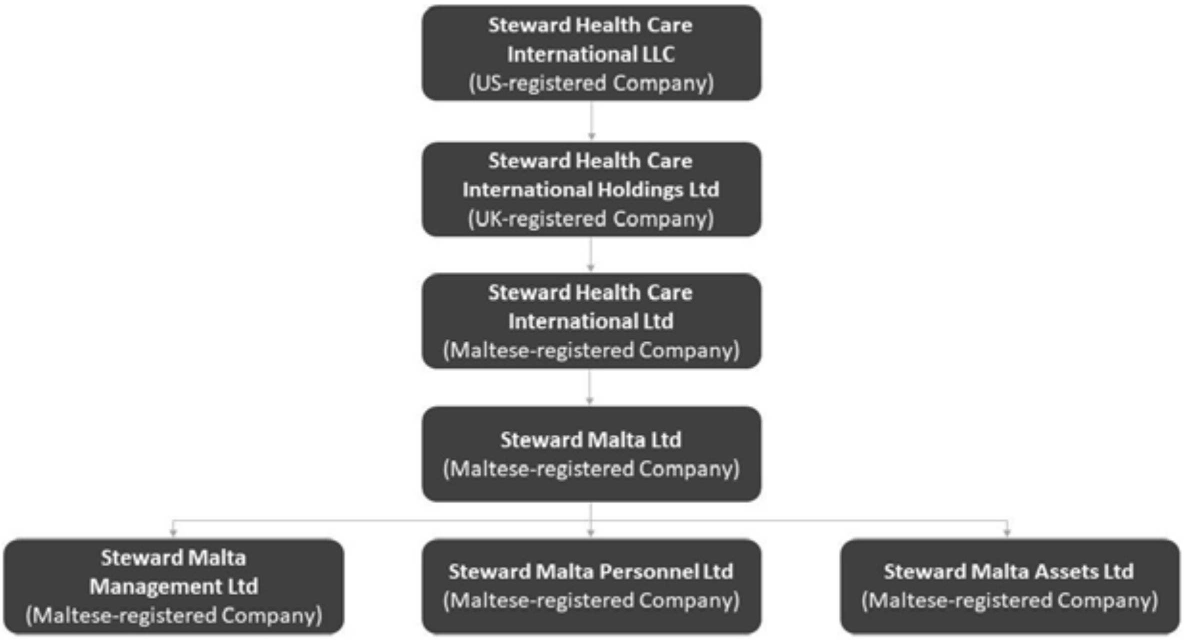
8.1.2 Records retained by the MBR indicated that SHC International Ltd was incorporated in Malta on 1 November 2017. As indicated in paragraph 2.6.10, SHC International Ltd held 95 per cent of the shares of Steward Malta Ltd. The remaining five per cent were held by Dr Ashok Rattehalli. Of note is that, on 30 May 2018, SHC International Ltd acquired the five per cent shareholding owned by Dr Rattehalli in Steward Malta Ltd and therefore became the sole shareholder of Steward Malta Ltd.

8.1.3 In turn, the shares of the Maltese-registered SHC International Ltd were held in their entirety by SHC International LLC, a company registered in the USA. The NAO noted that no reference was made to this company in the due diligence report commissioned for the Government, despite publicly available information indicating that the company had been incorporated since 3 May 2010. As at 30 May 2018, the corporate structure behind Steward Malta Ltd and its subsidiaries, which companies were the counterparties to Government in the concession under review, was as presented in Figure 61.

Figure 61 | Corporate structure behind Steward Malta Ltd, 30 May 2018

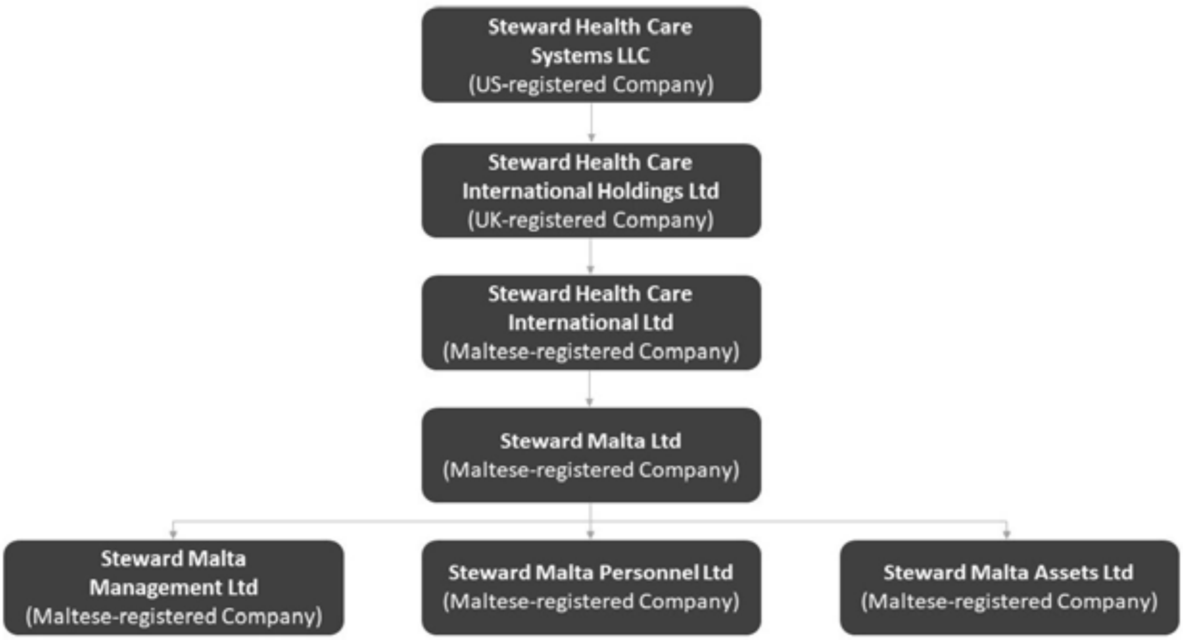
8.1.4 On 10 April 2019, the USA-registered SHC International LLC transferred its entire shareholding in the Maltese-registered SHC International Ltd to SHC International Holdings Ltd. The MBR was notified of this change on 8 May 2019, with capital transfer duty clearance provided by the CfR on 3 May 2019. Records obtained by the NAO from Companies House – the UK equivalent of the MBR – indicated that SHC International Holdings Ltd was registered in the UK on 9 April 2019. The shareholding of SHC International Holdings Ltd was owned by SHC International LLC. This change in shareholding introduced a UK jurisdiction to the corporate structure as illustrated in Figure 62, while retaining the same US ownership. The directors of the newly incorporated UK company were Dr Ralph De La Torre, Mr Herbert Holtz, Mr James Renna and Dr Armin Ernst. At the time, the latter also held the position of director with Steward Malta Ltd.

Figure 62 | Corporate structure behind Steward Malta Ltd, 10 April 2019



8.1.5 According to records held by Companies House and sourced by the NAO, on 22 April 2020, the US-registered SHC International LLC transferred its entire shareholding held in the UK-registered SHC International Holdings Ltd to SHC Systems LLC, another US-registered company for which the Government had originally obtained due diligence information in November 2017 prior to the transfer of the concession from the VGH to the SHC (section 2.2 of this report refers). The revised corporate structure is presented in Figure 63. Based on publicly available information, the NAO understood that it was at this juncture that the UBO of the Concessionaire changed, from Mr Stephen Feinberg to Dr Ralph de la Torre.

Figure 63 | Corporate structure behind Steward Malta Ltd, 22 April 2020



8.1.6 Of note to the NAO were developments registered on 15 June 2021 and published in The Gazette – the UK Government's official journal of record – that same day. According to records accessed from Companies House, the Registrar of Companies gave notice to SHC International Holdings Ltd that, unless cause was shown to the contrary, the company would be struck off the register and dissolved in not less than two months from the date of notice. Matters were temporarily resolved on 21 June 2021, when the striking off action contemplated under section 1000 of the Companies Act UK was ceased as cause had been shown to prompt the discontinuation of such action.

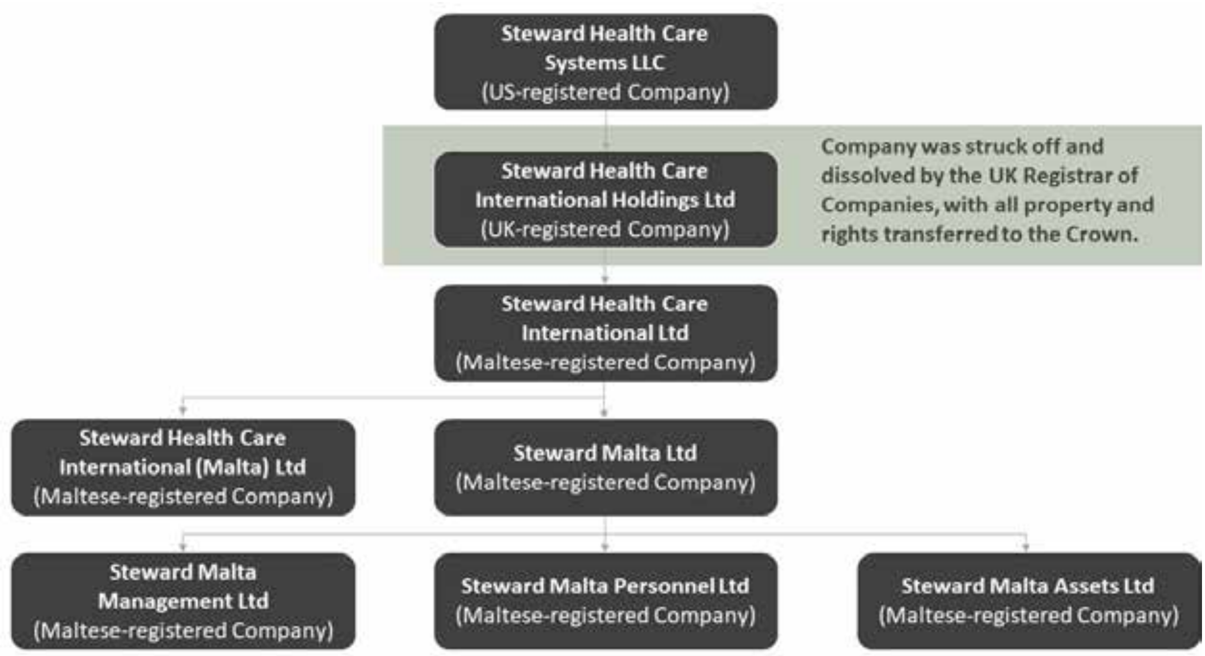
8.1.7 No information was traced by the NAO as to the reason for notification by the Registrar of Companies and the eventual withdrawal of such action. However, section 1000(1) of the Companies Act UK stipulates that, "If the registrar has reasonable cause to believe that a company is not carrying on business or in operation, the registrar may send to the company a communication inquiring whether the company is carrying on business or in operation." Further indicated by Companies House are the circumstances when the Registrar may strike a company off the register. Noted in this respect was that the Registrar may deem a company as not carrying on business or in operation if, "… [the Registrar has] not received company documents that should have been sent to them; mail that the Registrar has sent to a company's registered office is returned undelivered; the company has no directors". The NAO understood that failure to file one's accounts would constitute sufficient reason for deeming a company as not carrying on business or in operation. This Office established that no accounts were filed by SHC International Holdings Ltd in the period leading to its notice of dissolution.

8.1.8 Although the striking off was initially averted by SHC International Holdings Ltd, subsequent action taken by the Registrar of Companies resulted in an adverse outcome. Notice was again given on 7 December 2021, whereby the company was advised that it would be struck off the register and dissolved not less than two months from notice unless cause to the contrary was provided. SHC International Holdings Ltd was further informed that on the company's dissolution, all property and rights vested in or held in trust for the company, would be deemed bona vacantia, and would belong to the Crown. With the lapse of the statutory two-month period, the Registrar of Companies struck off SHC International Holdings Ltd on 15 February 2022 and dissolved the company on 22 February 2022. As in the earlier instance, the NAO did not trace any information indicating the cause for notification and the eventual strike off and dissolution.

8.1.9 The developments relating to the strike off and dissolution of SHC International Holdings Ltd in February 2022 were reported in the local media on 4 April 2022. This reporting triggered several enquiries by the NAO as to the significance of these developments on the concession under review. Queries to this effect were directed towards the MBR, the MFH, the MOT, the MSPP and the SHC.

8.1.10 The NAO sought to better understand the implications of the striking off and dissolution of SHC International Holdings Ltd, particularly in view of this company being the sole shareholder of the Maltese-registered SHC International Ltd, which in turn owns Steward Malta Ltd and its subsidiaries, that is, Steward Malta Assets Ltd, Steward Malta Management Ltd and Steward Malta Personnel Ltd. This Office is also aware that SHC International Ltd is the sole shareholder of SHC International (Malta) Ltd, a company registered in Malta on 25 January 2021 with the intention to provide health care services and maintain and operate hospitals. A schematic illustration of the corporate structure based on information available at the MBR as at 22 February 2022, the point at which SHC International Holdings Ltd was struck off, is presented in Figure 64. The perspective of primary interest to the NAO in this regard was that the companies subsidiary to that struck off were responsible for the concession granted by the Government for the redevelopment and operation of the GGH, the KGRH and the SLH.

Figure 64 | Corporate structure behind Steward Malta Ltd, 22 February 2022



The Malta Business Registry's perspective on unregistered business

8.1.11 The NAO sought to ascertain whether the MBR was aware of the dissolution of SHC International Holdings Ltd. In its initial response, the MBR indicated that it is ordinarily notified when dissolution takes place voluntarily by the company, when there are judicial proceedings in the Maltese Courts, and when there are insolvency procedures. In this case, the MBR noted that SHC International Holdings Ltd was struck off on the initiative of Companies House. Seeking information as to the reasons for the dissolution of the company, the MBR informed the NAO that it was unaware of the reasons since SHC International Holdings Ltd was registered in the UK. Nonetheless, the MBR noted that all the Maltese-registered companies subsidiary to the UK-registered SHC International Holdings Ltd were affected by the strike off of this company. In terms of the cascading effect of the dissolution on the Maltese subsidiary companies, the MBR referred to the notice issued by the Registrar of Companies wherein it was stated that all assets were transferred to the Crown. Therefore, the MBR expected a share transfer to be effected.

8.1.12 That stated by the MBR was taken over by events when, on 21 April 2022, the Registry received a Form T submitted by SHC International Ltd. Specified in this notice of transfer or transmission of shares was that the UK-registered SHC International Holdings Ltd transferred its shares in Maltese-registered SHC International Ltd to the Spanish company Cordiant Healthcare Services KSA SL. Indicated was that 150,000 ordinary shares, having a nominal value of $0.10 per share, were transferred. The signatory to this form was Dr Armin Ernst, in the capacity of director of SHC International Ltd. The form bore the clearance of the CfR in terms of capital transfer duty. This was stamped on 19 April 2022. Of note to the NAO was that, according to the form, the transfer was effected on 12 May 2020, that is, two years prior to the notification to the MBR and referral to the CfR.

8.1.13 The submission of the Form T by SHC International Ltd raised several concerns to the MBR. In correspondence submitted by the MBR to the SHC on 5 May 2022, the Registry indicated that:

a. the CfR was notified on 19 April 2022 and therefore relevant duty could not have been paid on 12 May 2020;

b. Dr Armin Ernst was appointed as a director of SHC International Ltd on 15 May 2020 and therefore was not authorised to sign the notification of share transfer dated 12 May 2020;

c. the nominal value of the 150,000 shares that were transferred was $0.01 and not $0.10; and

d. a BO2 Form – which form captures the UBO of a company – dated 6 November 2020 specified that the UK-registered SHC International Holdings Ltd was the UBO of SHC International Ltd; however, the Form T dated 12 May 2020 indicated that SHC International Holdings Ltd had transferred its shareholding to Cordiant Healthcare Services KSA SL, implying that the latter was now the UBO, and therefore the forms were contradictory.

The MBR sought clarifications on the above irregularities.

8.1.14 In response, on 20 May 2022, the SHC informed the MBR that a share transfer agreement was signed between SHC International Holdings Ltd and Cordiant Healthcare Services KSA SL on 12 May 2020, whereby the former transferred the 150,000 shares held in SHC International Ltd to the latter. The SHC informed the MBR that the companies applied for an exemption from capital gains tax and document duty on the share transfer on the basis that the transfer was part of a group restructuring exercise. Seeking to justify its delay in registering this transfer with the MBR, the SHC claimed that to apply for the tax and duty exemption, the transferor and transferee had to provide documentation for each company in the group structure indicating who the UBO was, to illustrate that ultimate ownership remained unchanged. The SHC contended that the sourcing of these documents from the UK, Spain and the USA was protracted due to various issues, including the COVID-19 pandemic and that certain jurisdictions did not issue share registers. Seeking to address the inconsistent information regarding the UBO of SHC International Ltd as presented in the Form T dated 12 May 2020 and in the BO2 Form dated 6 November 2020, the

SHC contended that there was a mistake in the wording of the latter form. The SHC noted that the BO2 Form should have read that Dr Ralph de la Torre was the 100 per cent UBO through the holding company SHC International SL (formerly Cordiant Healthcare Services KSA SL).[16]

8.1.15 In turn, on 2 June 2022, the MBR sought confirmation from the CfR that the transfer of shares was exempt from the payment of capital gains tax and document duty as claimed by the SHC. On 16 June 2022, the CfR indicated that the transfer was fully exempt from such payments in terms of Article 42(1)(b) of the Duty on Documents and Transfers Act (Chapter 364).

8.1.16 Following confirmation obtained from the CfR, the MBR referred the matter to the State Advocate on 17 June 2022, seeking guidance on whether the Registry was to accept the share transfer registration in view of complications that could only be tenuously explained by the SHC. The MBR provided the State Advocate with a summary of the case, highlighting the SHC's corporate structure, the concerns arising from the two-year lapse in the submission of the notification of the share transfer, the inconsistencies in ownership arising when comparing this notification with previous submissions, and the invalidity of the notification due to the signatory not being authorised. On 1 July 2022, the State Advocate provided advice to the MBR. Having considered: the invalidity of Form T since the signatory could not represent the company irrespective of when the Form was filed with the MBR; the error in the nominal value of the shares transferred; the mistake in the name of the UBO; and the considerable delay in the submission of the Form T to the MBR; the State Advocate advised the MBR to "… act in the same way as it does with all other companies. If usually, a Form T filed two years after the date written on the said Form is not accepted, then, irrespective of any reason, such a Form cannot be accepted unless the numerous mistakes are rectified in a manner which is acceptable to the Registry."

8.1.17 The NAO made enquiries with the MBR as to what action was taken following the advice provided by the State Advocate. In submissions to this Office, the Registry indicated that it had updated its records following notifications provided by the SHC and noted that the shares of SHC International Ltd were now held by SHC International SL, a Spanish-based company.

8.1.18 Through reference to public records held by the MBR, the NAO established that, on 18 August 2022, the Registry received correspondence submitted by SHC International Ltd, which correspondence was dated 10 November 2021. Cited in this correspondence was that the annual return submitted for 2020 was erroneous in that the declared shareholder of the company should have been Cordiant Healthcare Services KSA SL, as SHC International Holdings Ltd had transferred its entire shareholding to the former on 12 May 2020. An updated annual return, dated 1 November 2020, was appended to the correspondence.

8.1.19 Also received by the MBR on 18 August 2022 was correspondence from SHC International Ltd wherein the Registry was informed that Cordiant Healthcare Services KSA SL changed its name to SHC International SL on 1 July 2020. Another submission made on 18 August 2022 was the

[16] The name of the company Cordiant Healthcare Services KSA SL was changed to SHC International SL on 1 July 2020.

annual return of SHC International Ltd, which return was dated 1 November 2021. Noted in this return was that the entire shareholding of this company was held by SHC International SL.

8.1.20 On 25 August 2022, the MBR received an amended Form T submitted by SHC International Ltd. The amended Form reiterated the transfer of 150,000 ordinary shares from the UK-based SHC International Holdings Ltd to the Spanish company Cordiant Healthcare Services KSA SL at $0.01 per share. Of note to the NAO was that, through this amended Form T, SHC International Ltd revised the share price originally cited in its Form T received by the MBR on 21 April 2022 from $0.10 to $0.01 per share and altered the designation of Dr Armin Ernst at the point when the transfer of shares occurred – that is, 12 May 2020 – from Director to Secretary. Details relating to the original Form T submitted by SHC International Ltd to the MBR and received on 21 April 2022 are presented in paragraph 8.1.12.

8.1.21 Requested to indicate whether any penalties were imposed on SHC International Ltd, the MBR informed the NAO that fines amounting to €8,474 were levied. Of these, €179 were due for failure to issue share certificates, and €3,975 and €4,320 for failing to provide information about changes in the UBO. The NAO noted that the penalties imposed were less than those established in the Companies Act (Register of Beneficial Owners) (Amendment) Regulations, 2020 (Legal Notice 247 of 2020), which stipulated a penalty of €5,000 (as opposed to the €500 charged) and a daily penalty of €100 (as opposed to the €5 charged). In clarifications provided to this Office, the MBR indicated that €5,000 was the maximum allowed by law; however, the Registry's policy was to impose a penalty of €500 and a daily €5 charge.

The Ministry for Health's difficulties with visibility

8.1.22 Enquiries were also made by the NAO with the MFH. The PS MFH informed this Office that once the matter of dissolution of the UK-registered company was brought to its attention, the Ministry sought clarifications and information from the SHC. Correspondence attesting to this, dated 6 April 2022, was provided to this Office. In the correspondence submitted by the PS MFH to the President SHC Malta, reference was made to the media report regarding ownership of the concession. Reference was also made to searches undertaken through the MBR that confirmed that the UK-registered SHC International Holdings Ltd was the sole shareholder of SHC International Ltd and its affiliated companies registered in Malta that were responsible for the administration and were the beneficiaries of the concession agreements. In this context, the MFH requested the SHC to provide details pertaining to the striking off of SHC International Holdings Ltd and the actions that were being taken to remedy the situation. The SHC was further requested to provide documentation relating to and evidencing the ownership structure of SHC International Ltd and affiliated companies, including the identification of UBOs. In addition, in the event of an ownership structure that was different to that accounted for in the records held by the MBR, the MFH sought explanations as to why the SHC's filings with the Registry had not been duly updated. The MFH asserted that it reserved all legal rights and remedies at its disposal in the event that the request was not expeditiously attended to by the SHC, or information provided deemed unsatisfactory or evidenced a potential breach of the concession agreements.

8.1.23 The President SHC Malta submitted a preliminary reply to the PS MFH on 12 April 2022. The SHC indicated that the Maltese-registered SHC International Ltd was ultimately owned by the Spanish-based holding company SHC International SL. Furthermore, the UK-registered SHC International Holdings Ltd had been dormant for some time and was deregistered at the SHC's request to maintain a simple and clear corporate structure that reflected operational activity. The SHC maintained that this information was already known to the MFH pursuant to prior filings and notifications.

8.1.24 The NAO understood that stated by the SHC, that the MFH was aware of these facts, as reference to the due diligence exercise commissioned to Grant Thornton by the MFH and MFIN in early 2021 (paragraph 3.9.7 refers). Evident in the enquiries made by Grant Thornton to the SHC was its awareness of the existence of the Spanish-based SHC International SL, which was to acquire the shareholding of the UK-based SHC International Holdings Ltd. Links to the US-based SHC International Investors LLC were also identified by Grant Thornton.

8.1.25 On 18 April 2022, a further and more detailed submission was made by the President SHC Malta to the PS MFH. The SHC confirmed the deregistration of SHC International Holdings Ltd and provided the MFH with information relating to the ownership structure of SHC International Ltd. The corporate structure provided by the SHC to the MFH is reproduced in Figure 65. According to the SHC, information provided in this respect reflected the corporate structure as at 23 March 2022.

Figure 65 | Corporate structure behind Steward Malta Ltd, 23 March 2022

8.1.26 In support of the revised corporate structure, the SHC provided the MFH with a signed ledger of Santa Clara Holdings LLC, which indicated that Dr Ralph de la Torre was the sole shareholder of the company. Dr de la Torre was also the managing member of SHC International Investors LLC, with Santa Clara Holdings LLC owning 90,000,000 Class A shares, and four undisclosed minority shareholders owning 12,340,000 Class B shares, accounting for 87.9 and 12.1 per cent of total shares, respectively. The undisclosed minority shareholders owned 9.8, 2.0, 0.15 and 0.15 per cent of the total shares.

8.1.27 The SHC also provided the MFH with official records issued by the Spanish registry of companies – the Registradores de España – certifying that SHC International Investors LLC was the sole shareholder of SHC International SL. According to this document, the date of commencement of operations of SHC International SL, then still Cordiant Healthcare Services KSA SL, was 16 April 2020.

8.1.28 Appended to the submission by the SHC to the MFH was the sale and purchase agreement executed on 12 May 2020 between SHC International Holdings Ltd as seller and Cordiant Healthcare Services KSA SL as buyer, whereby the entire share capital of SHC International Ltd was sold and purchased. The consideration payable for the shares was €1,050,000. Also included was the Form T, as yet unsubmitted to the MBR, owing to the then pending matter relating to the payment of capital gains tax and document duty.

8.1.29 In parallel with enquiries made by the MFH with the SHC, the Ministry sought legal advice on 6 April 2022. The advice obtained from Camilleri Preziosi Advocates, dated 12 April 2022, was made available to the NAO. Cited in the advice was that, according to records held by the MBR, the UK-registered SHC International Holdings Ltd was the sole shareholder of the Maltese-registered SHC International Ltd. The latter was the sole shareholder of Steward Malta Ltd, which in turn was the sole shareholder of Steward Malta Assets Ltd and Steward Malta Management Ltd. Despite this depiction in public records, according to information provided under obligation of confidentiality to Camilleri Preziosi Advocates by the SHC in February 2021, the shares of SHC International Holdings Ltd were purportedly transferred to the Spanish-registered SHC International SL. Although a share transfer agreement dated 12 May 2020 was provided by the SHC, Camilleri Preziosi Advocates noted that the share transfer was not registered with the MBR, with SHC International Holdings Ltd still listed as the parent company of SHC International Ltd.

8.1.30 Notwithstanding the anomaly outlined in the preceding paragraph, Camilleri Preziosi Advocates noted that the validity of a share transfer agreement did not depend on its registration but became valid on signing. Nevertheless, from a governance and good standing perspective, Camilleri Preziosi Advocates maintained that the Government ought to insist that public records correctly reflect the corporate structure of the SHC in the context of its involvement in the concession. Reference was also made to the fact that the transfer could only be registered with the MBR once all tax formalities were adhered to. Camilleri Preziosi Advocates indicated that despite the transferor being struck off, the transferee/company was still able to register the transfer with the MBR, subject to penalties for delays, as transfers were to be registered within 14 days of notification to the company. Conceded in this respect was that the transferee/company was to register the transfer and therefore the Government could only exercise pressure for this to be done.

8.1.31 Regarding the potential impact of the strike off and dissolution of SHC International Holdings Ltd on the concession, Camilleri Preziosi Advocates referred to the SCA and the Emphyteutical Deed. As regards the SCA, the Agreement stipulated that, for three years from the completion date, the concessionaire was not to suffer or allow to suffer the transfer, transmission, allotment or assignment if its shares or the shares of its subsidiaries without the prior consent of Government. Camilleri Preziosi Advocates referred to the fact that the completion date had not yet been reached and contended that therefore the SHC could not allow the transfer of its shares or those of its subsidiaries without the Government's consent. In addition, Camilleri Preziosi Advocates indicated that neither the share transfer from the UK-registered SHC International Holdings Ltd to the Spanish-registered SHC International SL nor the devolving of the former property and rights to the Crown resulted in a transfer of shares in Steward Malta Assets Ltd or Steward Malta Management Ltd, which remained owned by Steward Malta Ltd. Camilleri Preziosi Advocates concluded that since these scenarios were not contemplated in the SCA, the consent of Government was not required.

8.1.32 As for the impact on the Emphyteutical Deed, the Deed stated that a change in the person or persons controlling the grantee required the prior consent of the grantor, that is, MIP Ltd. While Camilleri Preziosi Advocates acknowledged that a change in the person or persons controlling Steward Malta Assets Ltd required the consent of MIP Ltd, no further information or definition was specified in the Deed, including what constituted 'control'. Understanding this provision in a strict sense, whereby control is understood as meaning the direct control in the grantee, neither the transfer between the UK-registered and Spanish-registered companies, nor the devolving of the former's property and rights to the Crown triggered the requirement for consent to be obtained, for Steward Malta Assets Ltd remained directly controlled by Steward Malta Ltd. Were one to interpret the provision more broadly to capture a change of 'indirect control', the consent of MIP Ltd would be required if the share transfer from the UK to the Spanish company was not valid or effective and the shares therefore devolved to the Crown. On the other hand, if the share transfer between the two companies was effective and assuming that their UBO remained the same, there would be no change in control. Nonetheless, Camilleri Preziosi Advocates maintained that this matter would need to be definitively ascertained. Regardless, no specific consequence for a breach relating to the requirement to obtain consent was contemplated in the Emphyteutical Deed, and such breach was not listed among the events of default permitting termination. Camilleri Preziosi Advocates concluded that, aside from the above cited, there did not appear to be any effect on the concession agreements.

Other Government perspectives on the strike off and dissolution

8.1.33 Owing to the fact that the signatory to the concession agreements appearing on behalf of the Government was the Minister for Tourism, and that this responsibility arose from the assignment of Projects Malta Ltd (later the MSPP) to the MOT, the NAO directed queries to the PS MOT and the CEO MSPP. The PS MOT noted that this was a recent development and informed this Office that the MOT had long stopped being involved, kept informed or consulted on any matters pertaining to this concession. In turn, the CEO MSPP indicated that the MSPP was not aware of the dissolution of the SHC International Holdings Ltd and that it was not a party to any agreement entered with it or with any of its subsidiary companies. Consequently, the MSPP asserted that it had no knowledge of how the matter could affect any obligations arising from the agreements entered into.

A selective narrative by Steward Health Care

8.1.34 The NAO sought the views of the SHC regarding the consequences that arose from the strike off and dissolution of SHC International Holdings Ltd in February 2022, specifically since it was the sole shareholder of several Maltese-registered companies that controlled the concession. According to the General Counsel SHC International, this corporate structure had changed sometime earlier with the Maltese-registered companies now subsidiary to a Spanish company, that is, SHC International SL. This company had acquired the shareholding of all the Maltese subsidiaries from the UK-registered SHC International Holdings Ltd. The General Counsel SHC International asserted that the UK-registered company was not active after the transfer, hence its strike off by Companies House. Furthermore, the General Counsel SHC International stated that, for some reason, the MBR's records were not updated. The Legal Advisor SHC elaborated on the matter and indicated that the transfer of shares to the Spanish company was effected in 2020. He indicated that issues arose in the updating of records by the MBR, possibly connected to a tax exemption matter subject to the attention of the Commissioner for Revenue. Emphasised by the Legal Advisor SHC was that the SHC had submitted all relevant documentation to the MBR.

8.2 Consolidated financial statements of Steward Malta Group, formerly VGH Group

8.2.1 Having considered the changes in corporate structure behind the companies responsible for the concession, the NAO's attention now turns to the financial statements submitted to the MBR by these companies. The Steward Malta Group comprised Steward Malta Ltd and its three subsidiary companies, namely Steward Malta Management Ltd, Steward Malta Assets Ltd and Steward Malta Personnel Ltd. The consolidated financial statements of the Steward Malta Group were presented in the financial statements of Steward Malta Ltd, formerly VGH Ltd.

8.2.2 In 2018, the Steward Malta Group's total income amounted to €96,516,884, while its total expenses amounted to €102,879,998. Consequently, the group made a net loss of €6,363,114 for the financial year before charging taxation. In 2019, the group's income amounted to €101,308,228, while its total expenses amounted to €102,111,654. As a result, the group made a net loss of €803,426 for the financial year before charging taxation. In 2020, the group's total income amounted to €113,477,410, while its total expenses amounted to €107,423,825. For the first time the Steward Malta Group registered a profit for the year, which profit amounted to €6,053,585.

8.2.3 The Government allocation accounted for a substantial part of the Steward Malta Group's revenue and stood at €65,534,361 in 2018. For 2019 and 2020, a breakdown of this allocation was provided, distinguishing between the contracted Government allocation and additional reimbursements arising from claims related to the LSA. In 2019, the Government allocation amounted to €67,276,680, while the reimbursement was of €4,242,818. On the other hand, in 2020, the allocation by Government was of €67,103,447, whereas the amount received by the SHC in connection with the LSA claim was €21,117,570. Other income (€14,877,447 in 2018, €11,402,956 in 2019 and €11,980,054 in 2020) and revenue from the SCA (€14,458,372 in 2018, €15,680,452 in 2019 and €6,043,985 in 2020) was also earned. In 2020, the group registered revenue arising from additional services provided to the Government in connection with the COVID-19 pandemic, which payments amounted to €5,401,484 (Figure 66 refers).

8.2.4 The main expenses incurred by Steward Malta Group over the three-year period reviewed were staff costs (standing at €59,418,823 in 2018, €59,828,618 in 2019 and €61,261,469 in 2020), other expenses (€24,276,909 in 2018, €24,214,005 in 2019 and €31,633,723 in 2020) and costs related to the SCA (€13,954,993 in 2018, €14,879,484 in 2019 and €5,140,212 in 2020). During 2020, bad debts of €4,230,888 were also registered, as well as an exceptional item of €1,927,227 consisting of unallowed input VAT by the Commissioner for Revenue. Staff costs comprised the wages and salaries of the hospitals' employees (€49,826,101 in 2018, €49,736,412 in 2019 and €52,250,319 in 2020), payments to subcontracted staff (€7,538,780 in 2018, €8,629,970 in 2019, and €7,657,347 in 2020), other wages and salaries (€2,053,942 in 2018, €1,462,236 in 2019 and €1,353,803 in 2020) and directors' remuneration (€144,219 in 2018; no remuneration was paid in 2019 and 2020).

8.2.5 Outlined in the notes to the financial statements was that through the LSA and its subsequent Addendum, the Government had agreed to provide sufficient employees as required for the operation of the hospitals throughout the concession period commencing on 1 June 2016. The actual number of employees provided was less than that agreed and the group directly employed additional personnel to offset the shortfall. The group had submitted reimbursement claims to the Government for the cost of these employees. However, according to the financial statements, given the uncertainty of the timing and final amounts receivable from the Government, an adequate provision for bad debts was made.

Figure 66 | Steward Malta Group income statement, 2018-2020

	2018 (€)	2019 (€)	2020 (€)
Revenue	96,341,084	100,685,654	112,777,517
Direct costs	(90,801,106)	(89,040,431)	(82,872,128)
Gross profit	**5,539,978**	**11,645,223**	**29,905,389**
Administrative expenses	(11,954,642)	(11,242,713)	(18,532,068)
Exceptional Item	-	-	(1,927,227)
Finance income	175,800	622,574	699,893
Finance costs	(124,250)	(1,828,510)	(4,092,402)
Profit/loss	**(6,363,114)**	**(803,426)**	**6,053,585**

8.2.6 The gross profit margin of the Steward Malta Group in 2018 was 6 per cent and increased to 12 per cent in 2019, despite registering a loss of €6,363,114 in 2018 and €803,426 in 2019. This margin increased to 27 per cent in 2020 following a profit of €6,053,585. Of note were the significant administrative expenses incurred during the three years reviewed, amounting to approximately €12,000,000 in 2018, €11,000,000 in 2019 and €18,500,000 in 2020 (Figure 66 refers). A breakdown of these expenses was not provided in the financial statements.

8.2.7 The total assets of the Steward Malta Group increased over the three-year period reviewed. This was mostly due to a considerable increase in the contract asset from €26,448,935 in 2018, to €42,751,961 in 2019 and to €49,495,839 in 2020 (Figure 67 refers). Explained in the notes to the financial statements was that the group was recognising a contract asset in its statement of financial position to account for the construction, development, and maintenance of the healthcare services project during its construction period. The carrying amount of the contract asset was noted to be equal to the total costs incurred on the project, the profit on the completed construction and the financing revenue. It was also observed that the group recognised a financial asset attracting interest in its statement of financial position in consideration for the services it provided (such as design and construction). Such financial assets were recognised in the Statement of Financial Position as a contract asset, in an amount corresponding to the fair value of the infrastructure on first recognition and subsequently at amortised cost. The receivable would, in substance, be settled by the group's right to retain all rental payments to be effected by users on completion of construction. Such payments would be received partly from users and partly from the grantor. Moreover, the part of the investment that was covered by an unconditional contractual right to receive payments from the grantor (in the form of contractual services concession charges) was recognised as a contract asset up to the amount guaranteed.

Figure 67 | Steward Malta Group assets, 2018-2020

	2018(€)	2019 (€)	2020 (€)
Non-current assets			
Property, plant and equipment	2,802,465	3,924,450	6,055,608
Contract asset	26,448,935	42,751,961	49,495,839
Financial assets	-	5,040,000	1,971,812
	29,251,400	**51,716,411**	**57,523,259**
Current assets			
Inventories	1,733,259	2,334,091	3,715,624
Trade and other receivables	2,899,311	9,118,176	30,107,582
Cash and cash equivalents	528,164	2,683,769	100,662
	5,160,736	**14,136,036**	**33,923,868**
Total assets	**34,412,136**	**65,852,447**	**91,447,127**

8.2.8 Illustrated in Figure 68 are the amounts corresponding to the Steward Malta Group property, plant and equipment as at end of year 2018, 2019 and 2020. These consisted of plant and equipment, furniture, fixtures and fittings, office and computer equipment, improvements to premises, air conditioners, software and motor vehicles.

Figure 68 | Steward Malta Group property, plant and equipment, 2018-2020

	2018 (€)	2019 (€)	2020 (€)
Plant and equipment	1,042,332	2,093,637	4,232,523
Furniture, fixtures and fittings	399,769	500,341	558,201
Office and computer equipment	466,617	493,189	540,197
Improvements to premises	210,400	281,343	348,035
Air conditioners	1,051	731	178
Software	1,438	44,556	36,044
Motor vehicles	680,858	510,644	340,430
Total property, plant and equipment	**2,802,465**	**3,924,450**	**6,055,608**

8.2.9 As shown in Figure 69, during the period reviewed by the NAO, the Steward Malta Group registered a substantial increase in total liabilities. This was because while the group had no non-current liabilities in 2018, it registered €54,316,753 in non-current liabilities the following year and €61,104,731 in 2020. Meanwhile, current liabilities decreased between 2018 and 2019, from €68,157,293 to €46,084,277, yet increased to €58,837,394 in 2020.

Figure 69 | Steward Malta Group liabilities, 2018-2020

	2018 (€)	2019 (€)	2020 (€)
Non-current liabilities			
Interest bearing borrowings	-	22,393,882	24,732,948
Other borrowings	-	31,922,871	36,371,783
	-	**54,316,753**	**61,104,731**
Current liabilities			
Interest bearing borrowings	9,792,701	1,860,000	6,352,464
Trade and other payables	58,364,592	44,224,277	52,484,930
	68,157,293	46,084,277	58,837,394
Total liabilities	**68,157,293**	**100,401,030**	**119,942,125**

8.2.10 Noted in the financial statements was that the cash and cash equivalents for the Steward Malta Group in 2018 was -€7,264,535. This included a bank overdraft of €7,792,701, captured as part of the current interest-bearing borrowings in Figure 69. In 2019, the group's position in terms of cash and cash equivalents was reversed and stood at €2,683,769. However, in 2020 a bank overdraft of €3,804,016 was again noted, which brought the year-end position in terms of cash and cash equivalents to a negative balance of €3,703,354.

8.2.11 The Steward Malta Group registered a decreasing negative working capital over the period reviewed, from -€62,996,475 in 2018 to -€31,948,241 in 2019 to -€24,913,526 in 2020. 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. Sufficient working capital is usually indicated by a current ratio of between 1.5 and 3. In the case of the Steward Malta Group, the current ratio was less than 1, an indicator of negative working capital (Figure 70 refers).

Figure 70 | Steward Malta Group working capital and current ratio, 2018-2020

Working capital calculation	**2018**	**2019**	**2020**
Current assets	€5,160,736	€14,136,036	€33,923,868
Current liabilities	(€68,157,293)	(€46,084,277)	(€58,837,394)
	(€62,996,475)	**(€31,948,241)**	**(€24,913,526)**
Current ratio *(current assets/current liabilities)*	**0.08**	**0.31**	**0.58**

8.2.12 While the current ratio serves as an indication of a company's liquidity, other useful indicators of financial health are leverage financial ratios. These ratios measure the amount of capital that comes from debt and are therefore used to evaluate a company's debt levels. One such ratio is the debt ratio, which measures the relative amount of a company's assets that are funded from debt. The Steward Malta Group had a decreasing debt ratio over the period reviewed, from 1.98 in 2018 to 1.31 in 2020 (Figure 71 refers). A debt ratio of 0.6 or higher renders it difficult for a company to borrow money.

Figure 71 | Steward Malta Group debt ratio, 2018-2020

Debt ratio calculation	**2018**	**2019**	**2020**
Total liabilities	€68,157,293	€100,401,030	€119,942,125
Total assets	€34,412,136	€65,852,447	€91,447,127
Debt ratio	**1.98**	**1.52**	**1.31**

8.2.13 Another leverage financial ratio of interest is the debt-to-equity ratio, which calculates the extent of total debt and financial liabilities against shareholders' equity. The Steward Malta Group had a debt-to-equity ratio of -2.02 in 2018, -2.91 in 2019 and -4.21 in 2020 (Figure 72 refers). One must note that a negative debt-to-equity ratio means that the company has negative shareholder equity and that it has more liabilities than assets. Such a company would be considered extremely risky and possibly at risk of bankruptcy.

Figure 72 | Steward Malta Group debt-to-equity ratio, 2018-2020

Debt-to-equity ratio calculation	**2018**	**2019**	**2020**
Total liabilities	€68,157,293	€100,401,030	€119,942,125
Shareholders' equity	(€33,746,357)	(€34,549,783)	(€28,496,198)
Debt-to-equity ratio	**-2.02**	**-2.91**	**-4.21**

8.2.14 Also cited in the notes to the financial statements was that, as at 31 December 2018, the Steward Malta Group had a contingent liability in respect of guarantees given to third parties amounting to €2,300. As at this date, the group also had garnishee orders served against it by trade creditors amounting to €272,913. Both contingent liabilities persisted throughout 2019 and 2020. Furthermore, up to 30 December 2018, a related company had a performance guarantee in place on behalf of the group in favour of the Government in respect of the SCA amounting to €9,000,000. This requirement was waived by the Government thereafter.

8.2.15 Further noted in the financial statements for 2018 and 2019 was an emphasis of matter drawing attention to a material uncertainty that could cast significant doubt on the Steward Malta Group's ability to continue as a going concern. In the 2018 financial statements it was noted that, as at 31 December 2018, the group's total liabilities exceeded its total assets by €33,745,157. Additionally, during the period ending 31 December 2018, the group increased its activity but made a loss of €6,363,114. In the 2019 financial statements it was noted that, as at 31 December 2019, the group's total liabilities exceeded its total assets by €34,548,583. Furthermore, the group increased its activity but made a loss of €803,426 (Figure 66 refers). However, the independent auditor did not qualify his opinion on the financial statements. No emphasis of matter was reported in the 2020 financial statements. It was noted that during the period reviewed by the NAO, the director/s confirmed that the shareholders had given their undertaking to support the group so that it would continue operating in the foreseeable future as a going concern. For this reason, the director/s had adopted the going concern basis in preparing the financial statements.

8.3 Financial statements of Steward Malta Ltd, formerly VGH Ltd

8.3.1 VGH Ltd was registered in Malta on 13 May 2015. At its inception, this company was completely owned by Bluestone Investments Malta Ltd and its directors were Mr Mark Edward Pawley and Mr 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.

8.3.2 On 16 February 2018, the shareholding of VGH Ltd was transferred, wherein Bluestone Investments Malta Ltd – its parent company – transferred 1,140 of its ordinary shares to SHC International Ltd. The remaining 60 shares were transferred to Dr Ashok Rattehalli. The assignment of shares to Dr Rattehalli was in line with an agreement dated 12 May 2015 entered into between Dr Rattehalli and Bluestone Investments Malta Ltd. New directors were also appointed, namely, Dr Armin Ernst and Mr 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. The NAO noted that despite the increase in the authorised share capital, the issued share capital of VGH Ltd (later Steward Malta Ltd) remained €1,200.

8.3.3 Also on 16 February 2018, the registered address of VGH Ltd was changed to '171, Old Bakery Street, Valletta'. This address was that of Ganado Advocates, which law firm submitted a letter to the Registry of Companies on 21 February 2018 noting that the firm was never approached to give its consent for the use of its address as a registered office for the VGH companies. The registered address of VGH Ltd was subsequently changed and revised several times thereafter, with the address at the time of reporting being 'Steward Malta, St Luke's Hospital Campus, Guardamangia Hill, Pieta'.

8.3.4 The company name was changed from VGH Ltd to Steward Malta Ltd following an extraordinary shareholders' resolution on 10 April 2018. Dr Ashok Rattehalli transferred his shares in Steward Malta Ltd to SHC International Ltd on 30 May 2018. Nonetheless, noted in MBR documentation reviewed by the NAO was that the notice of this transfer was received by the Registry on 22 October 2020 and was resubmitted on 22 June 2021. Another change in the structure of Steward Malta Ltd came into effect on 1 June 2020, whereby Mr Michael Callum resigned from the office of director and legal and judicial representative. Therefore, as from this date, the sole director of the company was Dr Armin Ernst.

8.3.5 With effect from 6 November 2020 and as at June 2022, the UBO of Steward Malta Ltd was Dr Ralph de la Torre. The NAO sought to identify the UBO of Steward Malta Ltd prior to 6 November 2020. Records made available to this Office by the MBR indicated that, in a submission by its director Dr Armin Ernst, as at 13 May 2019, no natural person ultimately owned or controlled, whether through direct or indirect ownership or control, more than 25 per cent of the shares or voting rights in Steward Malta Ltd, or otherwise exercised control over the company through other means. Further information on the matter was obtained by the NAO through queries submitted to the SHC. According to the General Counsel SHC International, the UBO of Steward Malta Ltd prior to November 2020 was the ultimate controller of Cerberus Capital Management LP, understood by the NAO as Mr Stephen Feinberg. The General Counsel SHC International informed this Office that when the buy-out of SHC System LLC was effected, Dr de la Torre – who led the buy-out – became the principal shareholder. The NAO understood that the buy-out occurred towards June 2020.

8.3.6 The available financial statements for Steward Malta Ltd were those for 2018, 2019 and 2020. The financial statements described the principal activities of the company as relating to the SCA with the Government for the redevelopment, maintenance, management and operation of the sites at the GGH, the KGRH and the SLH. By way of background, Steward Malta Ltd had three subsidiary companies, namely Steward Malta Management Ltd, Steward Malta Assets Ltd and Steward Malta Personnel Ltd. Across the three years under review, Steward Malta Ltd incurred yearly losses amounting to €10,677 in 2018, €9,080 in 2019 and €9,165 in 2020 (Figure 73 refers). The company did not earn any revenue during the period reviewed. The main component of administrative expenses was the auditor's remuneration, which amounted to €7,500 per annum.

Figure 73 | Steward Malta Ltd income statement, 2018-2020

	2018 (€)	2019 (€)	2020 (€)
Revenue	-	-	-
Direct costs	-	-	-
Gross profit	**-**	**-**	**-**
Administrative expenses	(10,640)	(9,050)	(9,050)
Finance costs	(37)	(30)	(115)
Profit/loss	**(10,677)**	**(9,080)**	**(9,165)**

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8.3.7 During the period reviewed, the only element of assets was cash and cash equivalents, more specifically cash at bank. This increased from €73 in 2018 to €1,057 in 2019 and €942 in 2020 (Figure 74 refers).

Figure 74 | Steward Malta Ltd assets, 2018-2020

	2018 (€)	2019 (€)	2020 (€)
Current assets			
Cash and cash equivalents	73	1,057	942
Total assets	**73**	**1,057**	**942**

8.3.8 As shown in Figure 75, between 2018 and 2020, Steward Malta Ltd registered an increase in accumulated losses and total liabilities. Yearly losses from 2015 to 2020 resulted in accumulated losses of €50,974. Furthermore, while the company had no non-current liabilities, it registered trade and other payables of €31,602 in 2018, €41,666 in 2019 and €50,716 in 2020. These comprised related company balances and accruals.

Figure 75 | Steward Malta Ltd equity and liabilities, 2018-2020

	2018 (€)	2019 (€)	2020 (€)
Capital and Reserves			
Called-up share capital	1,200	1,200	1,200
Accumulated losses	(32,729)	(41,809)	(50,974)
	(31,529)	(40,609)	(49,774)
Current liabilities			
Trade and other payables	31,602	41,666	50,716
Total liabilities	**73**	**1,057**	**942**

8.4 Financial statements of Steward Malta Assets Ltd, formerly VGH Assets Ltd

8.4.1 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 Mr Mark Edward Pawley and Mr Ram Tumuluri. 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.

8.4.2 On 14 November 2016, a new company secretary was appointed, with Mr Ram Tumuluri replacing Mr Jonathan Vella. On 16 February 2018, new directors were appointed to manage VGH Assets Ltd, namely Dr Armin Ernst and Mr Michael Callum, replacing Mr Mark Edward Pawley and Mr Tumuluri. In addition, Mr Tumuluri resigned from his post as company secretary and was replaced by Dr Ernst. 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. The company name of VGH Assets Ltd was changed to Steward Malta Assets Ltd during a shareholders' general meeting held on 10 April 2018, following an extraordinary shareholders' resolution. The registered address of the company was revised again on this date.

8.4.3 Further updates to the key details of Steward Malta Assets Ltd ensued in subsequent years. On 23 August 2019, the company changed its registered office, and in the following year, on 30 May 2020, Mr Michael Callum resigned from the office of director and legal and judicial representative of the company.

8.4.4 With effect from 6 November 2020 and as at June 2022, the UBO of Steward Malta Assets Ltd was Dr Ralph de la Torre. The NAO sought to identify the UBO of Steward Malta Assets Ltd prior to 6 November 2020. Records made available to this Office by the MBR indicated that, in a submission by its director Dr Armin Ernst, as at 18 May 2019, no natural person ultimately owned or controlled, whether through direct or indirect ownership or control, more than 25 per cent of the shares or voting rights in Steward Malta Assets Ltd, or otherwise exercised control over the company through other means.

8.4.5 The NAO reviewed the audited financial statements of Steward Malta Assets Ltd for 2018, 2019 and 2020. Steward Malta Assets Ltd registered profits of €538,002 in 2018 and €333,899 in 2019; however, a notable loss of €7,317,941 was made in 2020, with the company's accumulated losses increasing to €7,797,012 up to year end 2020 (Figure 76 refers). The main revenue earned during the years under review was that from the services concession, which amounted to 96, 97 and 92 per cent of total revenue in 2018, 2019 and 2020, respectively. The revenue of Steward Malta Assets Ltd also included earned rental income of €525,000 in each year reviewed. It was noted that the difference between revenue and costs from the construction project during the three years reviewed represented, in substance, project management fees.

Figure 76 | Steward Malta Assets Ltd income statement, 2018-2020

	2018 (€)	2019 (€)	2020 (€)
Revenue from SCA	14,983,372	16,205,452	6,568,985
Costs related to SCA	(13,954,993)	(14,879,484)	(5,140,212)
Gross profit	**1,028,379**	**1,325,968**	**1,428,773**
Administrative expenses	(1,283,726)	(1,688,549)	(8,451,379)
Operating loss	(255,347)	(362,581)	(7,022,606)
Finance income	175,800	622,574	699,893
Finance costs	(617,549)	(73,906)	(995,228)
Profit/(loss)	**538,002**	**333,899**	**(7,317,941)**
Accumulated losses brought forward	(1,350,972)	(812,970)	(479,071)
Accumulated losses carried forward	**(812,970)**	**(479,071)**	**(7,797,012)**

8.4.6 The gross profit ratio of Steward Malta Assets Ltd in 2018 and 2019 stood at 6.9 per cent and 8.2 per cent, respectively. This increased substantially in 2020 to 21.8 per cent. Nonetheless, there were accumulated losses at year end 2020 of €7,797,012 that were carried forward to 2021.

8.4.7 Between 2018 and 2020, the total assets of Steward Malta Assets Ltd increased from €31,302,331 to €61,325,856, corresponding to an increase of 96 per cent. The major component of the total assets of VGH Assets Ltd was a contract asset. In 2018, 2019 and 2020, this cumulatively amounted to €26,448,935, €42,751,961 and €49,495,839, respectively (Figure 77 refers).

Figure 77 | Steward Malta Assets Ltd assets, 2018-2020

	2018 (€)	2019 (€)	2020 (€)
Non-current assets			
Property, plant and equipment	2,605,811	3,728,719	5,917,454
Contract asset	26,448,935	42,751,961	49,495,839
	29,054,746	**46,480,680**	**55,413,293**
Current assets			
Trade and other receivables	2,243,309	4,146,345	5,912,563
Cash and bank balances	4,276	26,630	-
	2,247,585	**4,172,975**	**5,912,563**
Total Assets	**31,302,331**	**50,653,655**	**61,325,856**

8.4.8 Figure 78 provides a breakdown of the amounts corresponding to property, plant and equipment. These consisted of motor vehicles, plant and equipment, furniture, fixtures and fittings, office and computer equipment and improvements to premises. As at end 2018, the total value of these assets was €2,605,811, which increased by 43 per cent to €3,728,719 in 2019 and by a further 59 per cent in 2020 to €5,917,454.

Figure 78 | Steward Malta Assets Ltd property, plant and equipment, 2018-2020

	2018 (€)	2019 (€)	2020 (€)
Motor vehicles	646,910	485,183	323,456
Plant and equipment	1,042,332	2,093,637	4,232,523
Furniture, fixtures and fittings	295,206	410,416	491,057
Office and computer equipment	433,895	480,585	522,383
Improvements to premises	187,468	258,898	348,035
Total property, plant and equipment	**2,605,811**	**3,728,719**	**5,917,454**

8.4.9 On the other hand, with respect to the equity and liabilities of Steward Malta Assets Ltd, the major component was trade and other payables, which was made up of trade payables, related company balances and accrued expenses. In 2018, the related company balances of €21,308,306 was the major component of trade and other payables. This, together with trade payables of €9,876,031 and accrued expenses of €929,764, resulted in an aggregate trade and other payables of €32,114,101. In 2019, trade payables, related company balances and accrued expenses were €12,840,476, €16,968,405 and €1,161,107, respectively, resulting in an aggregate amount of €30,969,988. In 2020, similar to the previous years, the main component of trade and other payables was related company balances of €30,865,594. There were also trade payables of €9,545,820 and accruals of €8,176,827, with the latter representing a substantial increase from previous years (Figure 79 refers). Noted in the financial statements was that these payables mainly arose from intercompany transfers and were unsecured, interest-free and had no fixed date of repayment.

Figure 79 | Steward Malta Assets Ltd equity and liabilities, 2018-2020

	2018 (€)	2019 (€)	2020 (€)
Equity			
Share capital	1,200	1,200	1,200
Accumulated losses	(812,970)	(479,071)	(7,797,012)
	(811,770)	**(477,871)**	**(7,795,812)**
Liabilities			
Non-current liabilities			
Borrowings	-	18,694,871	19,257,963
	-	18,694,871	19,257,963
Current liabilities			
Borrowings	-	1,466,667	1,275,464
Trade and other payables	32,114,101	30,969,988	48,588,241
	32,114,101	**32,436,655**	**49,863,705**
Total equity and liabilities	**31,302,331**	**50,653,655**	**61,325,856**

8.4.10 Steward Malta Assets Ltd had a consistent negative working capital in the years 2018 to 2020. The current ratio of Steward Malta Assets Ltd during this period was significantly less than 1, thereby serving as an indicator of insufficient current assets to cover the company's short-term debt (Figure 80 refers).

Figure 80 | Steward Malta Assets Ltd working capital and current ratio, 2018-2020

Working capital calculation	2018	2019	2020
Current assets	€2,247,585	€4,172,975	€5,912,563
Current liabilities	(€32,114,101)	(€32,436,655)	(€49,863,705)
	(€29,866,516)	**(€28,263,680)**	**(€43,951,142)**
Current ratio (Current assets/Current liabilities)	**0.07**	**0.13**	**0.12**

8.4.11 As regards the leverage financial ratios of Steward Malta Assets Ltd, its debt ratio for 2018, 2019 and 2020 stood at 1.02, 1.01 and 1.13, respectively (Figure 81 refers). As indicated previously, a debt ratio of 0.6 or higher renders it difficult for a company to borrow money. In terms of the debt-to-equity ratio of Steward Malta Assets Ltd, the company registered a negative ratio of 39.56, 107 and 8.87 in 2018, 2019 and 2020, respectively (Figure 82 refers). As stated earlier, companies with a negative debt-to-equity ratio are generally considered extremely risky and at risk of bankruptcy.

Figure 81 | Steward Malta Assets Ltd debt ratio, 2018-2020

Debt ratio calculation	2018	2019	2020
Total liabilities	€32,114,101	€51,131,526	€69,121,668
Total assets	€31,302,331	€50,653,655	€61,325,856
Debt ratio	**1.03**	**1.01**	**1.13**

Figure 82 | Steward Malta Assets Ltd debt-to-equity ratio, 2018-2020

Debt-to-equity ratio calculation	2018	2019	2020
Total liabilities	€32,114,101	€51,131,526	€69,121,668
Shareholders' equity	(€811,770)	(€477,871)	(€7,795,812)
Debt-to-equity ratio	**-39.56**	**-107.00**	**-8.87**

8.4.12 For the years 2018, 2019 and 2020, the directors of Steward Malta 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, Steward Malta Assets Ltd did not exceed the second and third criteria. In terms of this qualification, Steward Malta Assets Ltd did not submit a directors' report to the Registry of Companies.[17]

8.5 Financial statements of Steward Malta Management Ltd, formerly VGH Management Ltd

8.5.1 VGH Management Ltd was registered in Malta on 18 May 2015 and was owned by VGH Ltd. Its directors were Mr Mark Edward Pawley and Mr 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.

8.5.2 On 16 February 2018, new directors were appointed to manage the company, namely Dr Armin Ernst and Mr 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 VGH Management Ltd. The main objective of the company, 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. The name of VGH Management Ltd was changed to Steward Malta Management Ltd during a shareholders' general meeting held on 10 April 2018, following an extraordinary shareholders' resolution. The registered address was revised several times, with the last registered location being the SLH campus. Mr Callum resigned from the office of director and legal and judicial representative of the company effective 1 June 2020.

8.5.3 With effect from 6 November 2020 and as at June 2022, the UBO of Steward Malta Management Ltd was Dr Ralph de la Torre. The NAO sought to identify the UBO of Steward Malta Management Ltd prior to 6 November 2020. Records made available to this Office by the MBR indicated that,

[17] The Registry of Companies was reorganised as the MBR in April 2018.

in a submission by its director Dr Armin Ernst, as at 18 May 2019, no natural person ultimately owned or controlled, whether through direct or indirect ownership or control, more than 25 per cent of the shares or voting rights in Steward Malta Management Ltd, or otherwise exercised control over the company through other means.

8.5.4 The NAO reviewed the audited financial statements of Steward Malta Management Ltd for the years 2018 to 2020. During 2018, the company's turnover amounted to €81,882,712, while its total expenses amounted to €88,768,315. Consequently, Steward Malta Management Ltd registered a net loss of €6,885,603 for financial year 2018 prior to the charging of tax. Throughout 2019, Steward Malta Management Ltd's turnover amounted to €85,005,202 while the total expenses incurred were €86,123,316. As a result, the company made a net loss of €1,118,1140 in 2019 before charging tax. During 2020, the company's turnover amounted to €106,732,132, while its total expenses amounted to €93,339,651. Therefore, Steward Malta Management Ltd registered a profit of €13,392,481 for the year 2020 (Figure 83 refers). Noted in the Directors' Report and Statement of Directors' Responsibilities included in the financial statements for the years 2018 to 2020 was that the Board of Directors' main objective remained the expansion of the business model. The Board of Directors' intention was to develop Steward Malta Management Ltd through a realignment of the business to provide a more efficient and cost-effective structure. The Board of Directors believed that the measures that were being put in place ought to provide a platform for the company to achieve profitability.

Figure 83 | Steward Malta Management Ltd income statement, 2018-2020

	2018 (€)	2019 (€)	2020 (€)
Revenue	81,882,712	85,005,202	106,732,132
Direct costs	(76,846,113)	(74,160,947)	(77,720,496)
Gross profit	5,036,599	10,844,255	29,011,636
Administrative expenses	(11,180,440)	(10,059,983)	(10,594,869)
Exceptional Item	-	-	(1,927,227)
Finance costs	(741,762)	(1,902,386)	(3,097,059)
Profit/loss	**(6,885,603)**	**(1,118,114)**	**13,392,481**

8.5.5 The gross profit margin of Steward Malta Management Ltd in 2018 was 6 per cent and increased to 13 per cent in 2019, despite registering losses in both years. However, in 2020 this margin increased to 27 per cent. Of note were the significant administrative expenses incurred in 2018, 2019 and 2020, amounting to approximately €11,200,000, €10,100,000 and €10,600,000, respectively. A breakdown of these expenses was not provided in the financial statements.

8.5.6 A more detailed account of the revenue earned by Steward Malta Management Ltd is presented in Figure 84. The published financial statements did not provide any details regarding the source of the other income earned by the company despite that this accounted for a substantial proportion of total revenue.

Figure 84 | Steward Malta Management Ltd revenue, 2018-2020

	2018 (€)	2019 (€)	2020 (€)
Government allocation	65,534,361	67,276,680	67,103,447
Air-ambulance allocation	1,031,667	1,051,667	1,071,667
Labour Supply Agreement reimbursements	-	4,242,818	21,117,570
Settlement agreements	439,237	1,031,081	59,310
COVID-19 reimbursements	-	-	5,401,484
Other income	14,877,447	11,402,956	11,978,654
Total revenue	**81,882,712**	**85,005,202**	**106,732,132**

8.5.7 The nature of the expenses incurred by Steward Malta Management Ltd, as presented in the financial statements submitted to the MBR, were reviewed by the NAO and are illustrated in Figure 85. Most of the expenses incurred by Steward Malta Management Ltd in 2018, 2019 and 2020 were staff costs, which amounted to 67, 69 and 66 per cent, respectively. These comprised the wages and salaries of hospital employees, other wages and salaries and the cost incurred with respect to subcontracted staff. Included in the notes to the financial statements was that, by virtue of the LSA and its Addendum, the Government had agreed to provide sufficient employees for the operation of the hospitals throughout the concession. However, the actual number of employees provided was less than that agreed and Steward Malta Management Ltd had directly employed additional personnel to offset the shortfall. The company had submitted claims for reimbursement to the Government for the cost of these employees. Cited in the notes to the financial statements submitted by Steward Malta Management Ltd was that, given the uncertainty of the timing and the final amounts receivable from the Government, an adequate provision for bad debts was made by the company. In fact, in 2018, this provision increased by €4,172,524 which is a substantial amount when compared to the increase of €94,924 in the previous year. Moreover, in 2019, a further minor increase of €123,743 was recorded. However, a decrease in the provision for bad debts of €4,155,556 was recorded in 2020. The exceptional item of €1,927,227 recorded in 2020 was described in the notes to the financial statements as consisting of unallowed input value added tax by the Commissioner for Revenue.

Figure 85 | | Steward Malta Management Ltd expenses, 2018-2020

	2018 (€)	2019 (€)	2020 (€)
Depreciation of property, plant and equipment	45,490	60,345	55,558
Auditor's remuneration	35,000	35,000	35,000
Directors' remuneration	144,219	-	-
Staff costs	59,418,823	59,828,618	61,261,469
Finance costs	741,762	1,902,386	3,097,059
Increase/(decrease) in provision for bad debts	4,172,524	123,743	(4,155,556)
Bad debts	-	-	4,230,888
COVID-19 expenses	-	-	1,225,332
Loss on disposal of property, plant and equipment	-	-	32,654
Exceptional item	-	-	1,927,227
Other expenses	24,210,497	24,173,224	25,630,020
Total	**88,768,315**	**86,123,316**	**93,339,651**

8.5.8 The assets of Steward Malta Management Ltd for the years 2018, 2019 and 2020, as reported in its financial statements, were reviewed by the NAO (Figure 86 refers). The value of total assets recorded by Steward Malta Management Ltd between 2018 and 2020 increased from €28,340,472 to €64,332,054. In 2018, the non-current assets of Steward Malta Management Ltd comprised property, plant and equipment. In 2019, aside from property, plant and equipment, Steward Malta Management Ltd also registered a loan receivable of €5,040,000 as a financial asset, which decreased to €1,971,812 in 2020.

Figure 86 | Steward Malta Management Ltd assets, 2018-2020

	2018 (€)	2019 (€)	2020 (€)
Non-current assets			
Property, plant and equipment	196,654	195,731	138,154
Financial assets	-	5,040,000	1,971,812
	196,654	**5,235,731**	**2,109,966**
Current assets			
Inventories	1,733,259	2,334,091	3,715,624
Trade and other receivables	26,083,396	26,123,375	60,516,710
Cash and cash equivalents	523,817	2,656,082	99,720
	28,340,472	**31,113,548**	**64,332,054**
Total assets	**28,537,126**	**36,349,279**	**66,442,020**

8.5.9 The current assets of Steward Malta Management Ltd, as presented in Figure 86, comprised inventories, trade and other receivables and cash and cash equivalents. The inventories for 2018, 2019 and 2020 amounted to €1,733,259, €2,334,091 and €3,715,624, respectively. Furthermore, the NAO noted a significant increase in cash and cash equivalents, particularly in cash held at the bank, between 2018 and 2019. This increased from €523,817 to €2,565,082; however, subsequently decreased to €99,720 in 2020. The substantial element constituting the current assets of Steward Malta Management Ltd was trade and other receivables. A breakdown of these receivables is presented in Figure 87. Trade and other receivables increased from €26,083,396 in 2018 to €60,516,710 in 2020, attributable to the accretion in related company balances and accrued income. Noted in the financial statements was that the trade receivables were stated net of a provision for bad debts, amounting to €4,267,448 in 2018 €4,391,191 in 2019 and €235,635 in 2020.

Figure 87 | Steward Malta Management Ltd trade and other receivables, 2018-2020

	2018 (€)	2019 (€)	2020 (€)
Trade receivables	1,455,026	453,226	1,281,985
Related company balances	23,332,735	19,109,483	32,866,918
Advance deposits	346,777	294,500	208,250
Accrued income	-	5,048,177	25,366,933
Prepayments	567,258	814,789	792,624
Other receivables	381,600	403,200	-
Total trade and other receivables	**26,083,396**	**26,123,375**	**60,516,710**

8.5.10 The capital and reserves of Steward Malta Management Ltd comprised its share capital and accumulated losses. Over the period reviewed, the accumulated losses decreased from €32,898,222 to €20,623,855. On the other hand, the company's total liabilities increased from €61,434148 in 2018 to €87,064,675 in 2020. In 2019 and 2020, non-current liabilities consisting of interest-bearing borrowings and other borrowings were registered. The latter included related company payables which amounted to €31,922,871 in 2019 and €35,851,521 in 2020. The company's current liabilities consisted of interest-bearing borrowings and trade and other payables (Figure 88 refers).

Figure 88 | Steward Malta Management Ltd equity and liabilities, 2018-2020

	2018 (€)	2019 (€)	2020 (€)
Equity and liabilities			
Capital and reserves			
Called up issued share capital	1,200	1,200	1,200
Accumulated losses	(32,898,222)	(34,016,336)	(20,623,855)
	(32,897,022)	**(34,015,136)**	**(20,622,655)**
Liabilities			
Non-current liabilities			
Interest-bearing borrowings	-	3,699,011	5,474,985
Other borrowings	-	31,922,871	35,851,521
	-	**35,621,882**	**41,326,506**
Current liabilities			
Interest-bearing borrowings	9,792,701	393,333	5,077,000
Trade and other payables	51,641,447	34,349,200	40,661,169
	61,434,148	**34,742,533**	**45,738,169**
Total liabilities	**61,434,148**	**70,364,415**	**87,064,675**
Total equity, reserves and liabilities	**28,537,126**	**36,349,279**	**66,442,020**

8.5.11 The most substantial liability registered in 2018, 2019 and 2020 was trade and other payables. This comprised trade payables, hire purchase creditors, related company payables, accrued expenses, other payables, and indirect taxes, as presented in Figure 89. Of these components, trade payables and indirect taxes constituted the most significant charges.

Figure 89 | Steward Malta Management Ltd trade and other payables, 2018-2020

	2018 (€)	2019 (€)	2020 (€)
Trade payables	21,526,252	14,211,998	10,936,548
Hire purchase creditors	18,954	12,679	9,345
Related company payables	9,122,311	1,241,719	-
Accrued expenses	5,851,510	2,495,612	1,695,215
Other payables	-	38,500	-
Indirect taxes	15,122,420	16,348,692	28,020,061
Total trade and other payables	**51,641,447**	**34,349,200**	**40,661,169**

8.5.12 Noted by the NAO was that as at end 2018, Steward Malta Management Ltd had a negative balance in terms of cash and cash equivalents amounting to €7,268,884. This improved considerably by end 2019, where cash and cash equivalents amounted to €2,656,082. However, by end 2020, cash and cash equivalents had again reverted to a negative balance of €3,704,202 (Figure 90 refers). The negative balances in 2018 and 2020 were attributable to bank overdrafts of €7,792,701 and €3,803,922, respectively.

Figure 90 | Steward Malta Management Ltd statement of cash flow, 2018-2020

	2018 (€)	2019 (€)	2020 (€)
Cash flow from operating activities	(7,743,399)	14,834,430	(8,956,497)
Cash flows used in investing activities	(788,684)	(7,001,808)	(59,506)
Cash flows generated from financing activities	1,103,837	2,092,344	2,655,719
Movement in cash and cash equivalents	(7,428,446)	9,924,966	(6,360,284)
Cash and cash equivalents at beginning of the year	159,562	(7,268,884)	2,656,082
Cash and cash equivalents at end of the year	**(7,268,884)**	**2,656,082**	**(3,704,202)**

8.5.13 Steward Malta Management Ltd registered improvements in working capital during the period 2018 to 2020. The current ratio for Steward Malta Management Ltd during 2018 and 2019 was less than 1, thereby indicating insufficient short-term assets to cover the company's short-term debt; however, the situation improved in 2020. Sufficient working capital is generally evidenced by a ratio of current assets to current liabilities of between 1.5 and 3, whereas in the case of Steward Malta Management Ltd, this stood at 0.46 in 2018, 0.90 in 2019 and 1.41 in 2020 (Figure 91 refers).

Figure 91 | Steward Malta Management Ltd working capital and current ratio, 2018-2020

	2018	2019	2020
Working capital calculation			
Current assets	€28,340,472	€31,113,548	€64,332,054
Current liabilities	(€61,434,148)	(€34,742,533)	(€45,738,169)
	(€33,093,676)	**(€3,628,985)**	**€18,593,885**
Current ratio (current assets/current liabilities)	**0.46**	**0.90**	**1.41**

8.5.14 In terms of the debt ratio of Steward Malta Management Ltd, this stood at 2.15 for 2018, 1.94 for 2019 and 1.31 for 2020 (Figure 92 refers). As indicated previously, a debt ratio of 0.6 or higher renders it difficult for a company to borrow money. Although the company's debt ratio exceeded this threshold between 2018 and 2020, the NAO noted that this ratio was declining, a positive development for the company. In terms of its debt-to-equity ratio, Steward Malta Management Ltd registered a ratio of -1.87, -2.07 and -4.22 in 2018, 2019 and 2020, respectively (Figure 93 refers). As stated earlier, companies with a negative debt-to-equity ratio are generally considered extremely risky and at risk of bankruptcy.

Figure 92 | Steward Malta Management Ltd debt ratio, 2018-2020

Debt ratio calculation	2018	2019	2020
Total liabilities	€61,434,148	€70,364,415	€87,064,675
Total assets	€28,537,126	€36,349,279	€66,442,020
Debt ratio	**2.15**	**1.94**	**1.31**

Figure 93 | Steward Malta Management Ltd debt-to-equity ratio, 2018-2020

Debt-to-equity ratio calculation	2018	2019	2020
Total liabilities	€61,434,148	€70,364,415	€87,064,675
Shareholders' equity	(€32,897,022)	(€34,015,136)	(€20,622,655)
Debt-to-equity ratio	**-1.87**	**-2.07**	**-4.22**

8.5.15 Of note to the NAO was that the independent auditor's report for 2018 indicated a material uncertainty related to going concern. The auditor drew attention to a note in the financial statements that indicated that Steward Malta Management Ltd, despite having increased its activity, incurred a net loss of €6,885,603 during the year ending 31 December 2018 and, as at that date, the company's total liabilities exceeded its total assets by €32,897,022. Indicated in this note was that the directors had confirmed that the shareholder had given its undertaking to support Steward Malta Management Ltd so that it would continue operating in the foreseeable future as a going concern. However, the auditor's opinion was not modified in this respect.

8.5.16 Similar to the previous year, the auditor did not modify his opinion of the financial statements for the year ending 31 December 2019. However, the auditor drew attention to the fact that the total liabilities of Steward Malta Management Ltd exceeded the company's total assets by €34,015,136. This, together with a loss for the year of €1,118,114 (Figure 83 refers), indicated the existence of a material uncertainty that could cast significant doubt on the ability of Steward Malta Management Ltd to continue as a going concern. However, the notes to the financial statements reiterated the director/s' confirmation that the shareholder had given its undertaking to support Steward Malta Management Ltd so that it would continue operating in the foreseeable future as a going concern.

8.5.17 Contrary to 2018 and 2019, no emphasis of matter was made by the auditor in the 2020 financial statements of Steward Malta Management Ltd. As attested in the preceding paragraphs, in 2018 and 2019, the auditor drew attention to the fact that the company's total liabilities exceeded its total assets. Although this trend continued in 2020, with total liabilities exceeding total assets by €20,622,655 (Figure 88 refers), this difference declined year-on-year.

8.5.18 Included in the notes to the financial statements was that, as at 31 December 2018, Steward Malta Management Ltd had a contingent liability in respect of guarantees given to third parties amounting to €2,300. As at this date, the company also had garnishee orders served against it by trade creditors amounting to €272,913. Both contingent liabilities persisted throughout 2019 and 2020. It was further noted that up to 30 December 2018, a related company had a performance guarantee in place on behalf of Steward Malta Management Ltd in favour of the Government in respect of the SCA amounting to €9,000,000 and that this requirement was waived by the Government thereafter.

8.6 Financial statements of Steward Malta Personnel Ltd, formerly VGH Resources Ltd

8.6.1 VGH Resources Ltd was registered on 24 July 2017 and was renamed Steward Malta Personnel Ltd on 18 May 2018, a subsidiary of Steward Malta Ltd. Steward Malta Personnel Ltd had an authorised and issued share capital of €1,200 divided into 1,200 shares of €1 each. The main object of the company, as established in its Memorandum and Articles of Association, was to provide and supply all types of HR.

8.6.2 On 19 February 2018, the MBR received several notifications in relation to the company. These related to a change in its registered office, effective 16 February 2018, and the resignation of Mr Ram Tumuluri as director and secretary. He was replaced by Dr Armin Ernst, with Mr Michael Callum appointed as director. However, the company could be legally and judicially represented solely by the former or else by both directors. Mr Callum resigned as director of Steward Malta Personnel Ltd with effect from 1 June 2020.

8.6.3 With effect from 6 November 2020 and as at June 2022, the UBO of Steward Malta Personnel Ltd was Dr Ralph de la Torre. The NAO sought to identify the UBO of Steward Personnel Ltd prior to 6 November 2020. Records made available to this Office by the MBR indicated that, in a submission by its director Dr Armin Ernst, as at 24 July 2018, no natural person ultimately owned or controlled, whether through direct or indirect ownership or control, more than 25 per cent of the shares or voting rights in Steward Malta Personnel Ltd, or otherwise exercised control over the company through other means.

8.6.4 According to a revised Memorandum and Articles of Association, received at the MBR on 19 February 2018, the main object for which the company was formed was to acquire and hold, buy and/or sell and otherwise deal in shares, membership interests, stocks, bonds, debentures or securities of or in any other company or body of persons whether in Malta or anywhere else where the so doing may seem desirable in the interest of the company, and in such manner as may from time to time be determined, solely in the name of, for and on behalf of the company and the carrying out of such other acts and entering into such agreements as may be necessary, desirable, connected or ancillary in respect of the above.

8.6.5 The first financial statements available cover the period from the registration of the company (24 July 2017) to 31 December 2018, while the second covers 2019. Financial statements for year ended 31 December 2020 were not available as at June 2022. In the period under review by the NAO, Steward Malta Personnel Ltd incurred yearly losses, which resulted in total accumulated losses of €16,137 in 2019 (Figure 94 refers). Steward Malta Personnel Ltd increased its revenues and expenses in 2019. Included in the notes to the financial statements was that the average number of persons employed by the company during the year was 98 in the first period reviewed and 135 in 2019.

Figure 94 | Steward Malta Personnel Ltd, July 2017-December 2018, 2019

	2018 (€)	2019 (€)
Revenue	2,397,285	2,740,074
Administrative expenses	(2,403,321)	(2,750,205)
Loss for the period	**(6,036)**	**(10,131)**
Accumulated losses carried forward	**(6,036)**	**(16,137)**

8.6.6 The total assets of Steward Malta Personnel Ltd decreased by 48 per cent over the period reviewed (Figure 95 refers). While in 2018 the assets consisted only of accrued income, these consisted only of related company balances in 2019.

Figure 95 | Steward Malta Personnel Ltd assets, July 2017-December 2018, 2019

	July 2017 – December 2018 (€)	2019 (€)
Non-current assets		
Financial assets	-	-
Current assets		
Trade and other receivables		
Accrued income	2,397,285	-
Related company balances	-	1,241,719
Total assets	**2,397,285**	**1,241,719**

8.6.7 The NAO also noted a significant decline in trade and other payables, from €2,402,121 in 2018 to €1,256,686 in 2019 (Figure 96 refers). Trade and other payables consisted of related company balances, standing at €1,981,511 in 2018 and €0 in 2019, indirect taxes, standing at €0 in 2018 and €923,991 in 2019, and accrued expenses that decreased from €420,610 in 2018 to €332,695 in 2019.

Figure 96 | Steward Malta Personnel Ltd liabilities, July 2017-December 2018, 2019

	July 2017 – December 2018 (€)	2019 €)
Trade and other payables	2,402,121	1,256,686
Current tax liabilities	-	-
Total current liabilities	**2,402,121**	**1,256,686**

8.6.8 The substantial decline of the current liabilities over the period reviewed coincided with a decline in the current assets. 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 1.5 and 3. Steward Malta Personnel Ltd experienced a steady current ratio of approximately 1 during the period reviewed, which implies that the company can exactly pay off all its current liabilities with its current assets (Figure 97 refers).

Figure 97 | Steward Malta Personnel Ltd working capital and current ratio, 2018-2019

Working capital calculation	2018	2019
Current assets	€2,397,285	€1,241,719
Current liabilities	(€2,402,121)	(€1,256,686)
	(€4,836)	**(€22,052)**
Current ratio (current assets/current liabilities)	**1**	**0.99**

8.7 Consolidated financial statements of Steward Health Care International Ltd

8.7.1 SHC International Ltd was registered with the Registry of Companies on 1 November 2017. It was originally completely owned by SHC International LLC, registered in the USA, but transferred to SHC International Holdings Ltd, registered in the UK, on 10 April 2019, with due notification having been received by the MBR on 3 May 2019. SHC International Ltd had an authorised and issued ordinary share capital of €1,500 divided into 150,000 shares at €0.01 each. The main object/activity of the company, as established in its Memorandum and Articles of Association, was to provide health care and related services as well as the provision of services for the maintenance and operation of hospitals and other care sites anywhere in the world. The directors of SHC International Ltd were Mr Joseph C. Maher and Ms Nathalie Hibble, with the former resigning on 10 June 2019.

8.7.2 On 8 May 2018, two notifications were submitted to the MBR. One specified that Dr Armin Ernst was appointed as company secretary, whereas the other gave notice of a change in the registered office of SHC International Ltd. Both notices were effective as from 17 April 2018. Furthermore, effective 15 May 2020, Ms Nathalie Hibble resigned as director and Dr Ernst was appointed in her stead.

8.7.3 With effect from 6 November 2020 and as at June 2022, the UBO of SHC International Ltd was Dr Ralph de la Torre. The NAO sought to identify the UBO of SHC International Ltd prior to 6 November 2020. Records made available to this Office by the MBR indicated that, in a submission by its director Dr Armin Ernst, as at 1 November 2018, no natural person ultimately owned or controlled, whether through direct or indirect ownership or control, more than 25 per cent of the shares or voting rights in SHC International Ltd, or otherwise exercised control over the company through other means.

8.7.4 Noted in the consolidated financial statements was that SHC International Ltd owned two subsidiary companies, namely Steward Malta Ltd and MTrace plc. It was noted that the principal activity of Steward Malta Ltd was the work relating to the concession awarded to it and its own subsidiary companies, that is, Steward Malta Management Ltd and Steward Malta Assets Ltd. On the other hand, the principal activity of MTrace plc was that of operating a radio-pharmaceutical and isotopes production centre and laboratory.

8.7.5 The key financial highlights of SHC International Ltd, as a group and as a company, as extracted from the consolidated financial statements submitted, are presented in Figure 98.

Figure 98 | Steward Health Care International Ltd consolidated financial statements, Nov 2017 - Dec 2018, 2019

	Nov 2017 – Dec 2018 ($)		2019 ($)	
	The Group	**Company**	**The Group**	**Company**
Revenue	110,310,541	-	113,470,707	-
Direct costs	(103,967,266)	-	(99,935,840)	-
Gross profit	**6,343,275**	**-**	**13,534,867**	**-**
Administrative expenses	(15,511,816)	(44,319)	(12,529,439)	(7,899)
Finance income	201,291	-	699,400	-
Finance costs	(224,866)	-	(2,221,802)	-
Loss for the financial year	**(9,192,116)**	**(44,319)**	**(516,974)**	**(7,899)**
Minority interest	406,453	-	(372,069)	-
Loss attributable to shareholders	**(8,785,663)**	**(44,319)**	**(889,403)**	**(7,899)**
Total non-current assets	70,848,362	-	96,530,310	-
Total current assets	5,937,339	-	13,541,721	-
Total equity and reserves	(10,757,380)	(42,819)	(9,706,732)	(50,718)
Total liabilities	87,543,081	42,819	119,778,763	50,718
Accumulated Losses	**(8,785,663)**	**(44,319)**	**(9,674,706)**	**(52,218)**
Cash and cash equivalents	(8,324,394)	-	3,014,947	

8.7.6 During the period 1 November 2017 to 31 December 2018, SHC International Ltd made a net loss amounting to $44,319. The company did not have any revenue during this period of operation while its expenses amounted to $44,319. Meanwhile, the group's revenue amounted to $110,310,541 and its gross profit stood at $6,343,275, resulting in a gross profit margin of 5.8 per cent. The total expenses for the period stood at $119,703,948, of which $15,511,816 were administrative expenses. Consequently, the group registered a net loss before tax of $9,192,116 in the financial period November 2017 to December 2018. As at 31 December 2018 the company and the group had garnishee orders served against them by trade creditors amounting to $312,485. Cited as an emphasis of matter, according to the financial statements, as at 31 December 2018, the group's total liabilities exceeded its total assets by $10,757,380. This, along with the fact that during the period ending 31 December 2018, the group made a loss attributable to the shareholders of $8,785,663, indicated the existence of a material uncertainty that could cast significant doubt on the group's ability to continue as a going concern.

8.7.7 In 2019, SHC International Ltd made a net loss of $7,899. It did not generate any revenue during this year of operation, while its expenses amounted to $7,899. Throughout 2019, the group's revenue amounted to $113,470,707 and its gross profit was $13,534,867, resulting in a gross profit margin of 11.9 per cent. In this period, the group's total expenses stood at $114,687,081, with administrative expenses accounting for $12,529,439. Consequently, the group made a net loss prior to tax of $516,974 in 2019. Of note to the NAO was the significant drop in the group's loss attributable to shareholders, which change resulted from an increase in revenue of approximately $3,000,000, a decrease in direct costs of around $4,000,000, and a decrease in administrative expenses of $3,000,000, notwithstanding the $2,000,000 increase in finance costs. Also noteworthy was that the group's cash and cash equivalents improved from-$8,324,394 to $3,014,947. As at 31 December 2019, the company and the group had garnishee orders served against them by trade creditors amounting to $306,590. Noted in the financial statements as an emphasis of matter was that, as at 31 December 2019, the group's total liabilities exceeded its total assets by $9,706,732. This, along with the fact that during the same period the group made a loss attributable to the shareholders of $889,043, indicated the existence of a material uncertainty that could cast significant doubt on the group's ability to continue as a going concern.

8.7.8 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 1.5 and 3. SHC International Ltd had a current ratio considerably lower than the benchmark indicated, standing at 0.07 and 0.24 for 2018 and 2019, respectively (Figure 99 refers).

Figure 99 | SHC International Ltd working capital and current ratio, 2018-2019

Working capital calculation	2018	2019
Current assets	$5,937,339	$13,541,721
Current liabilities	($82,554,270)	($55,647,460)
	($76,616,931)	**($42,105,739)**
Current ratio (*current assets/current liabilities*)	**0.07**	**0.24**

8.7.9 As regards the leverage financial ratios of SHC International Ltd, its debt ratio for 2018 and 2019 stood at 1.14 and 1.09, respectively (Figure 100 refers). As indicated previously, a debt ratio of 0.6 or higher renders it difficult for a company to borrow money. In terms of the debt-to-equity ratio of SHC International Ltd, the company registered a ratio of -8.14 and -12.34 in 2018 and 2019, respectively (Figure 101 refers). As stated earlier, companies with a negative debt-to-equity ratio are generally considered extremely risky and at risk of bankruptcy.

Figure 100 | SHC International Ltd debt ratio, 2018-2019

Debt ratio calculation	2018	2019
Total liabilities	$87,543,081	$119,778,763
Total assets	$76,785,701	$110,072,031
Debt ratio	**1.14**	**1.09**

Figure 101 | SHC International Ltd debt-to-equity ratio, 2018-2019

Debt-to-equity ratio calculation	2018	2019
Total liabilities	$87,543,081	$119,778,763
Shareholders' equity	($10,757,380)	($9,706,732)
Debt-to-equity ratio	**-8.14**	**-12.34**

8.7.10 Despite the negative results reported in the financial statements for 2018 and 2019, the independent auditor did not qualify his opinion on the statements. Acknowledged in the notes to the financial statements for both years was that the director of SHC International Ltd had confirmed that the shareholders had given their undertaking to support the group so that it would continue operating in the foreseeable future as a going concern. Financial statements for year ended 31 December 2020 were not filed with the MBR as at June 2022 and hence could not be reviewed as part of this audit.

8.8 MTrace plc

8.8.1 MTrace plc was registered as a public limited liability company in Malta on 30 November 2015. The authorised and issued share capital of the company was €250,000, divided into 250,000 ordinary shares of €1 each. The shares were fully subscribed and allotted between Taomac Ltd and Mr Giuseppe Domizio Musarella, with the former owning 249,999 shares and the latter having one share, all of which were 25 per cent paid up. The directors of the company at its inception were Mr Musarella and Mr Andrea Marsili, while Mr Brian Bondin was the company secretary. One of the objectives of the company, in accordance with its Memorandum and Articles of Association, was that of running and managing a radio-pharmaceutical production centre including but not limited to a fully integrated laboratory facility in Malta.

8.8.2 On 27 October 2016, Mr Giuseppe Domizio Musarella resigned from his position as director and was replaced by Mr Brian Bondin. His shareholding was transferred to Mr Andrea Marsili on the same day. In addition, the shares held by Taomac Ltd were transferred to Vitals Procurement Ltd (249,875 shares) and to Mr Marsili (124 shares). On 11 November 2016, Vitals Procurement Ltd transferred a further 12,375 shares to Mr Marsili. In an extraordinary general meeting held on 31 January 2017, it was resolved that the issued share capital of 250,000 ordinary shares of €1 each – 25 per cent of which had been paid up in November 2015 – was to be fully paid up. A revised Memorandum and Articles of Association was registered reflecting these changes. On 20 February 2017, the registered office of MTrace plc was changed from Kappara Business Centre, 113, Birkirkara Road, San Gwann to LS3 Malta Life Sciences Park, San Gwann Industrial Park, San Gwann.

8.8.3 On 2 January 2018, Mr Brian Bondin resigned from director and company secretary. Similarly, on 15 January 2018, Mr Andrea Marsili resigned from director and legal representative of the company. On 13 August 2018, new directors and legal representatives were appointed, namely Dr Armin Ernst and Dr David Meli. On this day, 237,500 fully paid up shares of €1 each were transferred from Vitals Procurement Ltd to SHC International Ltd. On 28 September 2018, Dr Ernst was appointed company secretary of MTrace plc.

8.8.4 On 28 January 2021, share ownership was transferred from SHC International Ltd to Malta Enterprise. On this day, Dr Armin Ernst resigned from director and company secretary of MTrace plc. He was replaced by Mr Kurt Farrugia as director and by Mr Joseph Zammit as company secretary. Furthermore, on 1 April 2021, Dr David Meli resigned from director and legal representative of the company.

8.8.5 The NAO sourced the audited financial statements of MTrace plc relating to 2019 and 2020 through the MBR. The 2019 statements included figures corresponding to 2018, thereby allowing for comparative analysis. A note to the 2019 financial statements indicated that the 2018 comparative figures disclosed were reclassified to conform with the format applicable with the General Accounting Principles for Small and Medium-sized Entities.

8.8.6 During 2018, 2019 and 2020, MTrace plc did not earn any revenue; however, in 2019, the company registered €320,850 as other income. The most significant expense incurred in 2018 and 2019 were administrative expenses, which comprised 90 per cent and 56 per cent of total expenses in 2018 and 2019, respectively (Figure 102 refers). MTrace plc also incurred finance costs of €72,140 in 2018, €149,238 in 2019 and €113,049 in 2020 . This resulted in losses of €736,516 in 2018, €19,844 in 2019 and €176,351 in 2020.

Figure 102 | MTrace plc income statement, 2018-2020

	2018 (€)	2019 (€)	2020 (€)
Administrative expenses	(664,376)	(191,456)	(63,302)
Operating loss	**(664,376)**	**(191,456)**	**(63,302)**
Other income	-	320,850	-
Finance cost	(72,140)	(149,238)	(113,049)
Loss before tax	**(736,516)**	**(19,844)**	**(176,351)**
Tax expenses	-	-	-
Loss for the year	**(736,516)**	**(19,844)**	**(176,351)**

8.8.7 Administrative expenses consisted of employee benefits, professional fees, rent, and other charges (Figure 103 refers). The employee benefit expense comprised wages and salaries, social security costs and maternity fund contributions in respect of the sole employee of the company. Regarding professional fees, a substantial decline was noted from €447,615 in 2018 to €5,000 in 2019. Given that the financial statements corresponded to 2019, no information was disclosed with respect to the nature of the professional fees incurred in 2018. In 2020, the company incurred professional fees of €18,283. Of these, €5,000 corresponded to the annual statutory audit fee.

Figure 103 | MTrace plc administrative expenses, 2018-2020

	2018 (€)		2019 (€)		2020 (€)	
Employee benefit expense		94,812		98,386		38,477
Wages and salaries	92,323		95,893		37,586	
Social security costs	2,416		2,420		891	
Maternity fund contributions	73		73		-	
Professional fees		447,615		5,000		18,283
Rent expenses		114,400		82,256		-
Other expenses		7,549		5,814		6,542
Total administrative expenses		**664,376**		**191,456**		**63,302**

8.8.8 During the period 2018 to 2020, non-current assets consisting of property, plant and equipment, stood unchanged at €7,515,920 (Figure 104 refers). Property, plant and equipment comprised buildings valued at €612,139, furniture and fixtures valued at €3,781 and plant and equipment valued at €6,900,000. The notes to the financial statements indicated that since the company did not trade during 2019 and 2020, no depreciation was charged. With respect to current assets, the main component was indirect tax refundable, which comprised 87 per cent of total receivables in 2018 (€384,982) and 94 per cent in 2019 (€385,792). In 2020, €22,477 was registered as other receivables.

Figure 104 | MTrace plc assets, 2018-2020

	2018 (€)	2019 (€)	2020 (€)
Non-current assets			
Property, plant and equipment	7,515,920	7,515,920	7,515,920
	7,515,920	**7,515,920**	**7,515,920**
Current assets			
Receivables	444,819	408,269	22,477
	444,819	**408,269**	**22,477**
Total assets	**7,960,739**	**7,924,189**	**7,538,397**

8.8.9 In terms of equity and liabilities, MTrace plc had a share capital of €250,000 during the period reviewed. The yearly losses presented in Figure 102 resulted in accumulated losses, which stood at €1,167,712 in 2020. The company registered a substantial reduction in non-current liabilities, with borrowings decreasing from €4,357,040 to €1,904,400 between 2018 and 2020 (Figure 105 refers). This decrease resulted in a corresponding increase in current liabilities in 2020. The notes to the financial statements indicated that a third-party loan was secured by a general hypothec over the company's assets, by pledge on insurance policy and by other undertakings by the company. Moreover, the third-party loan bore an interest of 2.5 per cent per annum and was repayable over six years.

Figure 105 | MTrace plc equity and liabilities, 2018-2020

	2018 (€)		2019 (€)		2020 (€)	
Equity						
Share capital	250,000		250,000		250,000	
Accumulated losses	(971,517)		(991,361)		(1,167,712)	
		(721,517)		**(741,361)**		**(917,712)**
Liabilities						
Non-Current liabilities						
Borrowings	4,357,040		2,770,040		1,904,400	
		4,357,040		**2,770,040**		**1,904,400**
Current liabilities						
Borrowings	5,679		1,736,238		2,714,927	
Payables	4,319,537		4,159,272		3,836,782	
		4,325,216		**5,895,510**		**6,551,709**
Total liabilities		**8,682,256**		**8,665,550**		**8,456,109**
Total equity and liabilities		**7,960,739**		**7,924,189**		**7,538,397**

8.8.10 Current liabilities consisted of borrowings and payables. Borrowings comprised an overdrawn bank balance of €5,679 in 2018 and a third-party loan of €1,736,238 in 2019 and €2,714,927 in 2020 (Figure 105 refers). Payables decreased slightly between 2018 and 2020, from €4,319,537 to €4,159,272 to €3,836,782 (Figure 106 refers). The notes to the financial statements indicated that during the financial years 2018 and 2019, MTrace plc was a defendant in three court cases wherein suppliers made claims for services they rendered to the company. The three claims amounted to a total of €590,000. In January 2020, the shareholder settled these liabilities on behalf of the company. Regarding the amounts due to related parties and the shareholders, the notes to the financial statements indicated that these were unsecured, interest-free and repayable on demand.

Figure 106 | MTrace plc payables, 2018-2020

	2018 (€)	2019 (€)	2020 (€)
Payables			
Payables	1,451,356	1,162,197	555,836
Rent payable	169,640	196,678	196,678
Accruals	10,500	5,000	5,000
Amounts due to shareholders	-	2,765,712	2,701,577
Amounts due to related parties	2,598,358	-	-
Indirect tax payable	-	-	337,591
Other payables	89,683	29,685	40,100
	4,319,537	**4,159,272**	**3,836,782**

8.8.11 MTrace plc had a consistent negative working capital in 2018, 2019 and 2020. The current ratio of MTrace plc during this period was significantly less than 1, thereby serving as an indicator of insufficient current assets to cover the company's short-term debt (Figure 107 refers).

Figure 107 | MTrace plc working capital and current ratio, 2018-2020

	2018	2019	2020
Working capital calculation			
Current assets	€444,819	€408,269	€22,477
Current liabilities	€4,325,216	€5,895,510	€6,551,709
	(€3,880,397)	(€5,487,241)	(€6,529,232)
Current ratio (*Current assets/Current liabilities*)	**0.10**	**0.07**	**0.03**

8.8.12 As regards the leverage financial ratios of MTrace plc, its debt ratio for 2018 and 2019 stood at 1.09 and 1.12 for 2020 (Figure 108 refers). As previously indicated, a debt ratio of 0.6 or higher renders it difficult for a company to borrow money.

Figure 108 | MTrace plc debt ratio, 2018- 2020

Debt ratio calculation	2018	2019	2020
Total liabilities	€8,682,258	€8,665,550	€8,456,109
Total assets	€7,960,739	€7,924,189	€7,538,397
Debt ratio	**1.09**	**1.09**	**1.12**

8.8.13 In terms of the debt-to-equity ratio of MTrace plc, the company registered a negative ratio of 12.03 in 2018, 11.69 in 2019 and 9.21 in 2020 (Figure 109 refers). Companies with a negative debt-to-equity ratio are generally considered extremely risky and at risk of bankruptcy.

Figure 109 | MTrace plc debt-to-equity ratio, 2018-2020

Debt-to-equity ratio calculation	2018	2019 (€)	2020 (€)
Total liabilities	€8,682,258	€8,665,550	€8,456,109
Shareholders' equity	(€721,517)	(€741,361)	(€917,712)
Debt-to-equity ratio	**-12.03**	**-11.69**	**-9.21**

8.8.14 In the MTrace plc financial statements for 2019 and 2020, the auditor included an emphasis of matter, drawing attention to a note in the financial statements relating to events after the reporting period. This matter was deemed to be of importance to users of the financial statements in view of the potentially unfavourable nature of these developments and the impact that these may have on the basis of preparation of the financial statements. However, the auditor's opinion was not modified in that respect. The note indicated that MTrace plc was not directly affected by the COVID-19 pandemic and restrictions imposed by the Government thereafter since the company was not trading. Moreover, the shareholders had provided an undertaking that they would support the company to ensure it had sufficient funds to pay liabilities as and when they fell due. In this respect, the financial statements were prepared on a going concern basis.

8.8.15 For 2019 and 2020, the directors of MTrace plc 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, MTrace plc did not exceed the second and third criteria. In terms of this qualification, MTrace plc did not submit a directors' report to the Registry of Companies.

8.9 Steward Health Care International (Malta) Ltd

8.9.1 SHC International (Malta) Ltd was registered on 25 January 2021 and was owned by SHC International Ltd in its entirety. SHC International (Malta) Ltd had an authorised and issued ordinary share capital of €1,200 divided into 1,200 shares at €1 each. The main activity and business of SHC International (Malta) Ltd, as established in its Memorandum and Articles of Association, was to provide health care and related services and give services for the maintenance and operation of hospitals and other care sites anywhere in the world. The director of the company was Dr Armin Ernst. With effect from 25 January 2021 and as at June 2022, the UBO of SHC International (Malta) Ltd was Dr Ralph de la Torre.

8.9.2 No financial statements of SHC International (Malta) Ltd were available as at November 2022.

8.10 On the payment of tax and National Insurance

8.10.1 As part of the NAO's review of the financial position of the SHC, this Office sought information relating to tax and other payments due to the Government by the Concessionaire. Based on information sourced from the Office of the Commissioner for Revenue, as at 2 March 2022, the SHC had effected €3,405,583 in VAT payments, yet had an outstanding balance (including estimations due to missing returns) of €33,883,414. A balance of €516,356 was also due by the SHC to the Government in terms of tax on emoluments, National Insurance and additional tax. The indicated balances included payments due and made as from 2016 to 2021 (Figure 110 refers). The Office of the Commissioner for Revenue informed the NAO that 41 employees of the SHC were transferred to the Foundation for Medical Services as from September 2021.

Figure 110 | Tax and other payments due by the SHC, as at 2 March 2022

Company	VAT payments (€)	VAT balance (€)	FSS/NI/additional tax
SHC International (Malta) Ltd	0	50,555	0
SHC International Ltd	0	50,575	0
Steward Malta Assets Ltd	200	-6,205,335	0
Steward Malta Management Ltd	3,405,383	39,987,619	470,949
Steward Malta Personnel Ltd	0	0	45,407
Total	**3,405,583**	**33,883,414**	**516,356**

8.10.2 The NAO sought further clarification on the nature of the VAT deductible by Steward Malta Assets Ltd against the settlement of VAT due by it to the Government. According to the Office of the Commissioner for Revenue, the amount of €6,205,335 consisted of input VAT declared by the company as incurred on its business costs over the period December 2017 to November 2021. Nonetheless, according to the Commissioner for Revenue, such credit remained subject to verification before being released as a refund in favour of the company, and further blocked from the missing tax return for Year of Assessment 2021 which was, until then, still unsubmitted by Steward Malta Assets Ltd.

Chapter 9| Conclusions

9.1 Timeline of key events

9.1.1 The focus of this report was the change of control of the concession registered in February 2018 from the VGH to the SHC, with the latter assuming responsibility for the obligations borne in respect of the concession agreements. Hereunder is a timeline of the salient developments leading to and following this change of control, capturing the initial exchanges between the Government and the SHC leading to the transfer of shares, the several attempts at restructuring the concession, the implementation of the contractual framework in terms of the envisaged investment, services rendered and payments made, and matters relating to the ownership and finances of the Concessionaire. To provide context, the key events that occurred prior to the change of control – as reported in Parts 1 and 2 of this audit – are included in the timeline. In the main, reporting in relation to Part 3 captures developments that occurred up to end 2021 (Figure 111 refers).

Figure 111 | Timeline of key events

Date	Key event
February 2014	An MoU was signed between the Government and the QMUL regarding the development of the GGH as a teaching hospital.
2 April 2014	The Hon. Konrad Mizzi was appointed Minister for Energy and Health, while the Hon. Chris Fearne was appointed Parliamentary Secretary for Health.
10 October 2014	An MoU was signed between the Government and the developers and operators of the proposed project, the majority of whom would later constitute the VGH. The MoU outlined the investors' interest in the setting up of a Gozo Medical Complex.
9 December 2014	Bluestone Investments Malta Ltd was registered in Malta and was solely owned by the British Virgin Islands-registered company, Bluestone Special Situations 4 Ltd.
25 February 2015	An agreement was entered into between QMUL Malta, the QMUL, Malta Enterprise, the Ministry for the Economy, Investment and Small Business, 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.
13 March 2015	Funding for the "Malta Healthcare Projects" was secured by the VGH through a letter issued by the Bank of India. This document would later be submitted by the VGH as part of its bid and in so doing render evident its prior knowledge of the planned project and serve as proof of collusion with Government or its representatives.
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.

Date	Key event
27 March 2015	Mr Ram Tumuluri was appointed director and legal and judicial representative of Bluestone Investments Malta Ltd.
April 2015	Dr Armin Ernst was appointed as Chief Administrative Officer with the SHC, occupying this role until June 2016.
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.
13 May 2015	VGH Ltd, whose directors and legal and judicial representatives were Mr Mark Edward Pawley and Mr Ram Tumuluri, was registered. VGH Ltd fully owned three other companies, that is, VGH Management Ltd, VGH Assets Ltd and VGH Resources Ltd.
18 May 2015	VGH Management Ltd and VGH Assets Ltd were registered. Mr Mark Edward Pawley and Mr 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.
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, 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.
9 September 2015	Following negotiations, Projects Malta Ltd notified the VGH of the Government's intention to award it the services concession for the redevelopment, maintenance, management and operation of the sites at the GGH, the KGRH and the SLH.
27 October 2015	Cabinet 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 Mr 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 GGH, the KGRH and the SLH.

Date	Key event
30 November 2015	The Government, represented by the Minister for Energy and Health, and VGH Management Ltd, represented by Mr 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 Mr 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 Mr 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 Mr 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.
8 January 2016	The Government, represented by the Minister for Energy and Health, and VGH Management Ltd, represented by Mr 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.
2 March 2016	The VGH 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 for the sum of €9,000,000 and was valid until 31 May 2018.
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 KGRH and the SLH; 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 GGH, the KGRH and the SLH. On expiry, the grant could be extended for 69 years at the sole discretion of VGH Assets Ltd.
28 April 2016	The Hon. Konrad Mizzi ceases to be the Minister for Energy and Health and is sworn in as Minister within the OPM on 29 April 2016. The Hon. Chris Fearne is sworn in as Minister for Health.

Date	Key event
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 Mr 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 until 19 February 2017.
1 June 2016	Occurrence of the effective date, the point at which all rights and obligations arising from the concession agreements became operative between the Government and the VGH.
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.
July 2016	Dr Armin Ernst relinquished his role as Chief Administrative Officer SHC and assumed that of CEO VGH. He occupied this latter role until August 2017.
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 the SHC. This milestone would remain unfulfilled by the SHC during the period under review.
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 Mr 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.
21 November 2016	Request by the Union Ħaddiema Magħqudin – Voice of the Workers and the MAM submitted to the PAC for an audit 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 an audit of the concession.
9 December 2016	The NSO's analysis of the statistical treatment of the project was compiled, classifying it as an on-Government balance sheet entry. 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.
End 2016	In 2016, the 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 the SHC. Although some progress was registered when the concession was taken over by the SHC, this milestone remained unachieved.

Date	Key event
Early 2017	Dr Armin Ernst, then CEO VGH, initiated negotiations between the VGH and the SHC for the latter to become a cornerstone investor in the former.
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 Mr Ram Tumuluri, entered into the first Side Letter to the SCA. Through this Side Letter, the Government waived the Concessionaire's obligation to provide the Financing Agreements by 19 February 2017, subject to a copy being provided by not later than 30 June 2017.
23 June 2017	The Government, represented by the Minister for Tourism, and VGH Ltd, VGH Assets Ltd and VGH Management Ltd, collectively represented by Mr Ram Tumuluri, entered into a second Side Letter to the SCA. Through this Side Letter, the Government waived the Concessionaire's 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 was sworn in as Minister for Tourism following the 2017 General Election. Hon. Chris Fearne retained 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 Mr 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. These were the concession milestones taken over by the SHC in February 2018. This Addendum was not authorised by Cabinet.
30 June 2017	The Government, represented by the Minister for Tourism, and VGH Management Ltd, represented by Mr 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. This Addendum was not authorised by Cabinet.
30 June 2017	The Government, represented by the Minister for Tourism, and VGH Management Ltd, represented by Mr 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. This Addendum was not authorised by Cabinet.
11 July 2017	The Minister for Tourism submitted a memorandum through which Cabinet was requested to endorse that the Minister proceed with entering into an agreement with the VGH and the Sovereign Wealth Fund, which interim arrangement would eventually be replaced by direct and collateral agreements approved previously by Cabinet.

Date	Key event
11 July 2017	Cabinet approved the memorandum submitted by the Minister for Tourism. In submissions to the NAO, the Prime Minister maintained that this authorisation by Cabinet extended to a series of financing agreements that the Government, the SHC and the BOV would eventually enter into in 2018 and 2019.
24 July 2017	VGH Resources Ltd was registered.
August 2017	Dr Armin Ernst relinquished his role as CEO VGH.
September 2017	Dr Armin Ernst was engaged by SHC International as CEO and President.
1 September 2017	The Chief of Staff OPM met with representatives of the SHC – including the newly appointed CEO SHC International – in New York while accompanying the Prime Minister on an official visit. This was the earliest record of interaction between the Government and the SHC obtained by the NAO relating to the change of control of the concession.
September 2017	The Chief Legal Officer VGH submitted several requests to the Government for documentation required by Deutsche Bank necessary in its granting of financing. The VGH maintained that despite repeated requests, the Government did not provide the required documentation.
October 2017	The VGH provided the Government with notice that it was in default of its obligations under the concession in view of its hindrance to efforts by the Concessionaire to secure financing.
October 2017	The Minister for Health was first informed of a change in the concessionaire by the Prime Minister.
31 October 2017	Another meeting between the Government and the SHC regarding the latter's interest in taking over the concession was held in London.
1 November 2017	SHC International Ltd was registered with the Registry of Companies.
8/9 November 2017	The Minister for Tourism, following the direction of the Prime Minister, met with the CEO SHC International in London.
14 November 2017	The Government and the SHC met again regarding the latter's interest in taking over the concession. This meeting was also held in London. Mifsud Bonnici Advocates and RSM Malta attended the meeting on behalf of the Government.
17 November 2017	On the instruction of the MOT, Mifsud Bonnici Advocates requested C6 – an international provider of data intelligence – to undertake due diligence checks on SHC System LLC.
21 November 2017	The CEO SHC International informed the company's legal advisor that the Government intended to meet with the Director VGH to terminate its relations with the Concessionaire and threaten criminal action. The Director VGH indicated to the NAO that he was forced to transfer the shares of the VGH under duress despite him having no intention to do so.
22 November 2017	Another meeting was held between the Government and the SHC in London. This meeting was followed by others in Malta held on 2 December 2017 and 6 December 2017 and another in London on 30 January 2018. The Minister for Tourism, the Chief of Staff OPM, Mifsud Bonnici Advocates and RSM Malta represented the Government, while the SHC was represented by the CEO SHC International, other officials and the company's legal counsel.

Date	Key event
December 2017	The Director VGH indicated that several meetings between the SHC and the VGH were held in London and in Malta in December 2017. In attendance at these meetings were the Director VGH, the CEO SHC International and the parties' legal representatives.
1 December 2017	A due diligence report on SHC System LLC, titled 'Enhanced Due Diligence – Business Bespoke Report' was submitted to Mifsud Bonnici Advocates.
12 December 2017	Internal correspondence by the SHC stating that it had not completed a due diligence review and that if it did not take over the concession as requested by the Government, then the Government would terminate the concession and the SHC consequently lose its lead.
19 December 2017	The Prime Minister informed Cabinet that there existed the possibility of positive developments in connection with the hospitals' concession.
20 December 2017	The CEO SHC International informed the Chief of Staff OPM that the SHC had foregone undertaking due diligence for several reasons, one of which was the pressing timeline.
21 December 2017	Sale and Purchase Agreement between SHC International Ltd and Bluestone Investments Malta Ltd entered into. Through this Agreement, SHC International Ltd was to acquire VGH Ltd and its subsidiaries.
21 December 2017	In separate public announcements, the Prime Minister and the Minister for Health indicated that the SHC took over the concession.
27 December 2017	The Director VGH requested the Minister for Tourism to, on behalf of Government, provide its consent, acceptance and approval to the sale by Bluestone Investments Malta Ltd of shares in issue in VGH Ltd to SHC International Ltd.
27 December 2017	A similar request was made to the MIP Ltd, wherein approval for the sale of the shares was again requested.
27 December 2017	The Director VGH sought the endorsement of the Minister for Tourism, on behalf of Government, to extend the deadline to provide a fully executed copy of the Financing Agreements to 5 March 2018, or to one month post the expiry of the conditional share Sale and Purchase Agreement.
29 December 2017	The Minister for Tourism, acting on behalf of the Government, granted approval for the transfer of the shares held by Bluestone Investments Malta Ltd in VGH Ltd to SHC International Ltd.
End 2017	In 2017, the Government paid the VGH a total fee of €33,555,813.
3 January 2018	MIP Ltd approved the transfer of the shares held by Bluestone Investments Malta Ltd in VGH Ltd, the latter being the then shareholder of VGH Assets Ltd, to SHC International Ltd. VGH Assets Ltd had originally been granted the sites at the GGH, the KGRH and the SLH by title of temporary emphyteusis.
9 January 2018	The Minister for Tourism submitted a memorandum to Cabinet seeking approval for the transfer of shares held by Bluestone Investments Malta Ltd in VGH Ltd to SHC International Ltd and the extension of the longstop date for financial close until 5 March 2018 or one month post the expiry of the conditional share sale and purchase agreement, whichever was the earliest.

Date	Key event
9 January 2018	Cabinet approved that proposed by the Minister for Tourism through the memorandum submitted earlier on the day, namely, the transfer of shares held by Bluestone Investments Malta Ltd in VGH Ltd to SHC International Ltd and the extension of the longstop date for financial close.
16 January 2018	The NAO set the terms of reference that were to guide it in its audit.
26 January 2018	The CEO SHC International informed the Minister for Tourism of the actions that Government was to take to allow for the conclusion of its deal with the Government prior to entry into the Sale and Purchase Agreement with the VGH. These included the temporary and conditional release of the performance bond by the Government, the need for a standstill agreement, and the deferral of the payment of taxes until the Concessionaire's financial records were updated.
27 January 2018	The CEO SHC International submitted correspondence to the Chief of Staff OPM, Mr Shaukat Ali and Mr Asad Ali regarding the SHC's proposals to complete the transfer of shares and provided an explanation on certain aspects of negotiation. In addition, the CEO SHC International noted that the Minister for Health had contacted him for an update, but he had not disclosed any information. Highlighting the need to revert to the Minister for Health, the CEO SHC International sought the comments of the Chief of Staff OPM.
15 February 2018	The final meeting between the Government and the SHC prior to it assuming control of the concession was held in Boston. Aside from the persons generally tasked with representing the Government, also in attendance for this meeting was the Minister for Health.
15 February 2018	SHC International Ltd submitted correspondence to the Minister for Tourism citing that it was in the process of acquiring the shareholding of the VGH and referred to the approval by Government to extend the deadline for the submission of the financing agreements. The SHC confirmed that it was able to finance its obligations under the concession agreements through the SHC group's resources and relationships.
15 February 2018	SHC International Ltd submitted correspondence to the Minister for Tourism seeking Government's assurance to assist in the implementation of the concession and confirmation that the Concessionaire had satisfied the obligations to finance the concession under the contractual agreements and the financing extension letter.
undated	The Minister for Tourism endorsed the correspondence submitted by SHC International Ltd dated 15 February 2018.
16 February 2018	SHC International Ltd acquired VGH Ltd and its subsidiaries. As part of this acquisition, Bluestone Investments Malta Ltd transferred 1,140 of its ordinary shares in VGH Ltd to SHC International Ltd, while the remaining 60 shares were transferred to Dr Ashok Rattehalli. Resulting from the acquisition of VGH Ltd and its subsidiaries was the resignation of the incumbent directors and company secretary, with Mr Mark Edward Pawley and Mr Ram Tumuluri replaced by Dr Armin Ernst and Mr Michael Callum.

Date	Key event
16 February 2018	The Emphyteutical Deed stipulated that a laudemium was to be paid whenever a transfer occurred, unless it was an intra-group transfer. No laudemium was paid to MIP Ltd in terms of the Emphyteutical Deed despite that authorisation for the transfer had been granted on 3 January 2018 and that the UBO of the Concessionaire had changed.
19 February 2018	The Prime Minister informed Cabinet that the transfer of the shares from the VGH to the SHC was made that day, and that all matters relating to the transfer of the shares would be concluded by the next day.
19 February 2018	The Leader of the Opposition, in his capacity as a Member of Parliament, submitted a writ of summons to the First Hall of the Civil Court against the Prime Minister, the Attorney General, the CEO MIP Ltd, VGH Assets Ltd, VGH Ltd, VGH Management Ltd, the CEO Lands Authority and the Chair of the Board of Governors of the Lands Authority, calling for the annulment of the temporary emphyteusis of the sites at the GGH, the KGRH and the SLH, and for these hospitals to be returned to the Government.
20 February 2018	The acquisition of the concession was formally announced by SHC System LLC.
5 March 2018	Between 5 March 2018 and 15 October 2018, the obligation of the SHC to provide evidence of its financing arrangements was neither met by the Concessionaire nor waived by the Government.
14 March 2018	The earliest record of negotiations following the transfer of shares was internal correspondence by the Concessionaire, wherein the CEO SHC International and the company's legal advisor referred to the start of discussions with the Government on the amendments and variations required in respect of the concession and how this process was to be documented.
22/23 March 2018	First meeting held by the Government and the SHC following the change of control; however, no record of this meeting was made available to the NAO.
March 2018	Quarterly quality performance reports were submitted by the GGH and the KGRH for the period commencing in Q1 2018 and ending in Q4 2021. The GGH Q1 2018 report featured a set of 19 core KPIs to gauge the three aspects of quality, namely clinical effectiveness, patient safety and experience. Certain gaps in submissions were noted. On the other hand, the KGRH Q1 2018 report comprised 27 KPIs, which related to different aspects of performance, including admissions, occupancy, length of stay, mortality rate, readmission and discharge outcomes and waiting times.
10 April 2018	Following an extraordinary shareholders' resolution, the name of VGH Ltd was changed to Steward Malta Ltd, that of VGH Assets Ltd to Steward Malta Assets Ltd, and that of VGH Management Ltd to Steward Malta Management Ltd.
23 April 2018	The QAB was reconvened following the change of control of the concession. The Board met on a regular basis, once monthly, through till January 2020.

Date	Key event
8 May 2018	First Sanction Letter entered into, whereby the BOV granted Steward Malta Management Ltd an overdraft facility of €5,000,000 to finance its working capital requirements in connection with the operation of the sites. The Government was also a signatory to this agreement, effectively guaranteeing the facility made available by the BOV to the SHC. Appearing on behalf of the Government was the Minister for Tourism.
18 May 2018	VGH Resources Ltd was renamed Steward Malta Personnel Ltd.
30 May 2018	Dr Ashok Rattehalli transferred his shares in Steward Malta Ltd to SHC International Ltd. The effect of this transfer on the corporate ownership of the Concessionaire was that the Maltese-registered parent company SHC International Ltd was owned in its entirety by the US-registered SHC International LLC.
31 May 2018	Eurostat EDP dialogue visit to Malta held between 31 May 2018 and 1 June 2018.
31 May 2018	Expiry of the performance guarantee provided by the VGH to the Government.
1 June 2018	In correspondence submitted by the SHC to the Minister for Tourism and citing the requirement in the SCA for the Concessionaire to provide the Government with a performance guarantee of €9,000,000, the SHC committed to honour this obligation.
5 June 2018	The Minister for Tourism sought Cabinet's authorisation of the exemption requested by the SHC on 1 June 2018, such that for the six-month period commencing on 1 June 2018, the performance guarantee would only be called by the Government in the event of operational breaches. This, he argued, would enable the implementation of changes required by the Government to ensure that the concession was classified as an off-balance sheet transaction.
5 June 2018	Cabinet approved the memorandum put forward by the Minister for Tourism, agreed to informally disclose the concession agreements to Eurostat as proposed by the Minister for Health, and resolved that the leadership of key project-related boards be transferred to the MFH.
22 June 2018	Direct Agreement entered into between the Government, represented by the Minister for Tourism, Steward Malta Management Ltd, Steward Malta Assets Ltd, Steward Malta Ltd and the BOV. Through this Agreement the parties acknowledged and confirmed that the Bank was to be considered as falling within the definition of 'lenders', that the obligations of Steward Malta Management Ltd as borrower were to be considered to fall within the definition of 'lenders' debt', and that the First Sanction Letter was to fall within the definition of 'financing agreements' in terms of the SCA. The NAO noted that the consent of Cabinet for Government to enter into this Agreement was not obtained.
22 June 2018	Steward Malta Management Ltd, the BOV and the Government, represented by the Minister for Tourism, entered into the Security by Title Transfer Agreement. Through this agreement, the parties sought to secure the performance of the obligations of Steward Malta Management Ltd under the First Sanction Letter.

Date	Key event
25 June 2018	Meeting held between the MOT and the SHC to initiate clarifications on certain aspects of the contracts. This was the earliest evidence of interface between the Government and the SHC at the operational level made available to the NAO.
25 June 2018	In correspondence submitted by the Minister for Tourism to the SHC, the Minister indicated that it was the intention of the Government and the SHC to seek changes to the concession agreements, such that the agreements reflected the situation pertaining in 2018, put the concession into globally bankable form, and dealt with other practical matters. According to the SHC, this correspondence evidenced the Government's commitment to renegotiate the terms of the concession.
6 July 2018	The HMC remained not constituted during the period under review following the transfer of the concession to the SHC. To address the lacuna created in the contractual framework, the MFH set up an internal ministerial committee, the PC, whose functions were similar to those of the HMC in terms of the safeguarding of patient services. The PC was first convened on this date and met regularly until end 2019, with its last meeting held on 22 November 2019.
26 July 2018	SHC Malta submitted correspondence to the Minister for Tourism and to the Minister for Health in relation to the GGH, the KGRH and the SLH project, whereby it sought to define the matters subject to discussion in relation to the concession agreements. Appended were the Agreed Key Principles, understood by the NAO as a framework arrived at between the parties prior to the submission of this correspondence.
19 September 2018	Second Facility Agreement entered into, whereby the BOV granted a loan facility of €3,000,000 in favour of Steward Malta Management Ltd. The Government was also a signatory to this agreement, effectively guaranteeing the loan facility made available by the BOV to the SHC. Appearing on behalf of the Government was the Minister for Tourism.
1 October 2018	In its report pursuant to the 31 May 2018 EDP dialogue visit, Eurostat confirmed the on-Government balance sheet recording of the concession.
8 October 2018	First meeting of the Clarification Steering Committee, wherein representatives of the MFH and the MOT met with the SHC to discuss several aspects relating to the concession.
15 October 2018	The Minister for Health sought Cabinet's approval for the Government to temporarily waive the obligations of the SHC in relation to the performance guarantee and the financing agreements stipulated as part of the conditions precedent in the SCA. This temporary waiver was sought until 31 December 2018.
16 October 2018	Cabinet approved the waiver of the SHC's obligations to submit a performance guarantee and the financing agreements until 31 December 2018.
31 October 2018	The final record of the work of the Clarification Steering Committee were minutes of a meeting held on 31 October 2018.

Date	Key event
13 November 2018	The first Amendment and Restatement Agreement (Direct Agreement) between the Government of Malta and Steward Malta Management Ltd, Steward Malta Assets Ltd, Steward Malta Ltd and the BOV was entered into. Annexed to this Agreement was the First Amended and Restated Direct Agreement, through which the overdraft and loan facilities of €5,000,000 and €3,000,000, respectively, were considered as part of the financing agreements. The NAO noted that the consent of Cabinet was not obtained.
13 November 2018	Steward Malta Management Ltd, the BOV and the Government, represented by the Minister for Tourism, entered into the first Amendment and Restatement Agreement (Security by Title Transfer). Annexed to this was the First Amended and Restated Security by Title Transfer Agreement, through which the Security by Title Transfer Agreement was amended and restated to, among others, secure the performance of the obligations of Steward Malta Management Ltd under the Second Facility Agreement.
31 December 2018	Completion date as originally envisaged in the SCA. This date was later made contingent on the issuance of the planning permits.
End 2018	In 2018, the Government paid the VGH and the SHC a total fee of €37,728,041, of which €3,108,998 was paid to the VGH and €34,619,043 to the SHC.
End 2018	In 2018, the Steward Malta Group registered a loss of €6,363,114.
1 January 2019	Between 1 January 2019 and 20 January 2020, no waiver was provided by the Government to the SHC in relation to its obligation to submit evidence that the primary lenders and financing agreements were in place.
1 January 2019	Between 1 January 2019 and 5 August 2019, the SHC did not provide the Government with the required performance guarantee.
8 February 2019	The first meeting of the PMB was held following the transfer of the concession from the VGH to the SHC in February 2018. The focus of the PMB was mainly related to the planning of the redevelopment, maintenance, management and operation of the sites at the GGH, the KGRH and the SLH. During this meeting, the Chair PMB suggested that for reasons of practicality, the HCC and the PMB were to merge until the achievement of the concession milestones. Despite that the PMB was to convene every two weeks, the Board only met 10 times in 2019.
26 March 2019	The first masterplan providing details of the development that was to be undertaken at the GGH, the KGRH and the SLH was submitted by the SHC to the PMB.
10 April 2019	SHC International LLC (USA) transferred its entire shareholding in SHC International Ltd (Malta) to the UK-registered SHC International Holdings Ltd.
23 April 2019	Although the NAO had limited visibility over developments that occurred in this period, a glimpse was sourced through a timeline drawn up by the SHC outlining the procedure that was to be followed for the review of the SCA, the HSDA and the LSA. This process of review was to be finalised by June 2019.

Date	Key event
April 2019	Grant Thornton established the reimbursement payable by the Government to the SHC for the replacement of resources as €4,866,431. This charge was settled in April 2019.
17 July 2019	The Third Facility Agreement was entered into, whereby the BOV granted a term loan facility of €22,250,000 in favour of Steward Malta Assets Ltd, and a term loan facility of €5,900,000 in favour of Steward Malta Management Ltd. The Government was also a signatory to this agreement, effectively guaranteeing the term loan facility made available by the BOV to the SHC. Appearing on behalf of the Government was the Minister for Tourism. The NAO noted that the consent of Cabinet was not obtained.
17 July 2019	The second Amendment and Restatement Agreement (Direct Agreement) between the Government of Malta, and Steward Malta Management Ltd, Steward Malta Assets Ltd, Steward Malta Ltd and the BOV was entered into. Annexed to this Agreement was the Second Amended and Restated Direct Agreement, through which the loan facilities of €22,250,000 and €5,900,000 were considered as part of the financing agreements.
17 July 2019	Steward Malta Management Ltd, the BOV and the Government, represented by the Minister for Tourism, entered into the second Amendment and Restatement Agreement (Security by Title Transfer). Annexed to this was the Second Amended and Restated Security by Title Transfer Agreement, through which the First Amended and Restated Security by Title Transfer Agreement was amended and restated to, among others, secure the performance of the obligations of Steward Malta Management Ltd under the Third Facility Agreement.
31 July 2019	The Minister for Tourism requested the authorisation of Cabinet for the waiver of the SHC's obligation to provide the performance guarantee until sign-off of the appropriate legal documentation, which signing-off would conclude the clarification discussions.
5 August 2019	Cabinet resolved that the temporary waiver was to remain in effect until end 2019.
22 August 2019	MoU entered into between the Government and the SHC. While the MoU was non-binding, and primarily intended to expedite clarifications between the parties, certain terms proposed altered elements of risk and reward of the concession.
26 August 2019	The Minister for Tourism requested the authorisation of Cabinet to enter into a direct agreement with the BOV and the SHC in respect of facilities made available by the Bank to the Concessionaire of €5,000,000, €3,000,000 and €27,900,000. Through this agreement, court-declared nullity of the transaction documents would be tantamount to a non-rectifiable government event of default and that the Government would therefore be liable to pay the lenders' debt.

Date	Key event
27 August 2019	Cabinet approved entry into the direct agreement. According to the minutes of the Cabinet meeting held, the Minister for Tourism had indicated that the recommended course of action was pursuant to lengthy meetings with MFIN, the BOV and other unspecified stakeholders. Nonetheless, the implication of the broadening of what was to constitute a government non-rectifiable event of default was that, in the case of court-declared nullity of the concession agreement, the Government would be liable to pay the Concessionaire €100,000,000 and the sum of the lenders' debt incurred. This implication was not made clear to Cabinet by the Minister for Tourism.
27 August 2019	The third Amendment and Restatement Agreement (Direct Agreement) between the Government, and Steward Malta Management Ltd, Steward Malta Assets Ltd, Steward Malta Ltd and the BOV was entered into. Annexed to this Agreement was the Third Amended and Restated Direct Agreement, through which the definition of non-rectifiable government events of default was broadened.
10 September 2019	The Minister for Health informed Cabinet of the discussions underway between the Government and the SHC arising from the need to amend certain provisions of the concession's contractual framework. These discussions were being held in consultation with MFIN and were being led by the Minister for Tourism. In addition, the Minister for Health informed Cabinet that an inter-ministerial decision had been taken whereby the sites assigned through the concession were to remain Government property. Cabinet approved that proposed.
20 September 2019	An update to the masterplan was presented to the PMB by the SHC, which included an executive summary, a revised planning and delivery roadmap and development considerations for the Malta and Gozo sites.
27 September 2019	The Minister for Tourism requested Cabinet's endorsement of the principles set out in the MoU dated 22 August 2019.
1 October 2019	Cabinet approved the MoU submitted by the Minister for Tourism.
17 October 2019	A development masterplan was submitted by the SHC to the PMB with respect to the SLH and the KGRH. This masterplan included details of the planning principles and the development program.
October 2019	The SHC informed the NAO that, between October 2019 and November 2019, several meetings were held with the Government intended to render the concession bankable.
October 2019	The construction of the Barts Medical School was completed. While the completion of the School represented the achievement of a concession milestone by the SHC and despite pockets of progress registered in other respects, all other milestones remained outstanding while the concession was under its control.
20 November 2019	An update was provided to the PMB by the SHC that included a development summary and schedule, a revised bed development plan for the KGRH, site rendering plans and details relating to the SLH physiotherapy department.

Date	Key event
20 November 2019	After the PMB meeting held on 20 November 2019, the Board failed to meet again in 2019, 2020 and 2021. The SCA stipulated that the PMB was to meet on a fortnightly basis. Given that the HCC was fused with the PMB, the non-convening of the PMB meant that that the HCC was similarly inactive.
22 November 2019	Correspondence was submitted by the SHC legal advisor to Camilleri Preziosi Advocates, assisting the Ministry for Tourism, wherein it was noted that the concession agreements were to be finalised over the next few days for Cabinet approval to be sought on 26 November 2019 and signing of the agreements by not later than 12 December 2019.
26 November 2019	Feedback was provided by the SCH on the proposed rehabilitation, restoration and part redevelopment of the KGRH and the SLH as cited in the SHC masterplan.
26 November 2019	Dr Konrad Mizzi resigned as Minister for Tourism.
1 December 2019	Dr Joseph Muscat resigned as Prime Minister.
11 December 2019	Another report, titled PMB Clinical Review, was presented by the SHC with respect to the GGH. The report included a masterplan development summary, a functional content summary, a clinical adjacency review and key departmental diagrams.
20 December 2019	An outline development application for the masterplan for the rehabilitation and upgrading of the SLH for medical healthcare and ancillary facilities was submitted by the SHC. The application was noted as withdrawn as at September 2022.
End 2019	The resignation of the Prime Minister and the Minister for Tourism and the general political upheaval that ensued resulted in the Government stalling its renegotiation of the concession, effectively bringing to a close the first round of negotiations between the Government and the SHC.
End 2019	In 2019, the Government paid the SHC a total fee of €43,384,175.
End 2019	In 2019, the Steward Malta Group registered a loss of €803,426.
13 January 2020	Dr Robert Abela took office as Prime Minister.
21 January 2020	Cabinet agreed to waive the SHC’s obligation to submit a performance guarantee and the financing agreements up to the end of February 2020 after the matter had been raised by the Minister for Health.
27 January 2020	Following the QAB meeting held on 27 January 2020, the Board did not convene for several months due to the control measures that were enforced by the Government to prevent the transmission of COVID-19.
19 February 2020	Revised plans were submitted by the SHC to the PA in respect of drawings previously submitted by the VGH for the refurbishment of the GGH. As at June 2022, the application status was at ‘screening process’.
19 February 2020	A full development application was submitted by the SHC for the upgrading of theSLH. The application was for the rehabilitation of the main building, the demolition of several other buildings, the construction of a rehabilitation centre and a surface car park, external landscaping and the re-routing of internal roads. As at June 2022, the application status was set as ‘withdrawn by applicant’.

Date	Key event
25 February 2020	Cabinet decided that the SHC was not to be granted another waiver and acknowledged that the way forward for this concession for the time being was that the parties were to honour the agreements originally entered into and follow developments.
1 March 2020	Following the expiry of the Government's waiver on 29 February 2020, the SHC failed to submit a performance guarantee until end December 2021, that is, the period under review.
March 2020	The first cases of COVID-19 were detected in Malta.
14 April 2020	In a meeting of Cabinet, the Minister for Health noted that the SHC did not submit the performance guarantee and therefore was in breach of the contract; yet acknowledged that the employees were to be paid and medical services provided. For this to be possible, the Government had to transfer funds to the SHC, which transfer was approved by Cabinet.
21 April 2020	Further submissions were made by the SCH to the PA regarding the outline application submitted by the SHC for the rehabilitation and upgrading of the SLH.
22 April 2020	SHC International LLC (US) transferred its entire shareholding held in SHC International Holdings Ltd (UK) to SHC Systems LLC, another US-registered company. The NAO understood that it was at this juncture that the UBO of the Concessionaire changed, from Mr Stephen Feinberg to Dr Ralph de la Torre.
12 May 2020	The entire share capital of SHC International Ltd (Malta) was sold by SHC International Holdings Ltd (UK) to the Spanish-registered Cordiant Healthcare Services KSA SL. This transfer was notified to the MBR on 21 April 2022.
12 May 2020	The Emphyteutical Deed stipulated that a laudemium was to be paid whenever a transfer occurred, unless it was an intra-group transfer. No laudemium was paid to INDIS Malta Ltd in terms of the Emphyteutical Deed despite that the UBO of the Concessionaire had changed.
Mid 2020	The Government and the SHC commenced a fresh round of negotiations. The Government's main interlocutors during this phase of negotiations were the Minister for Health, the Minister for Finance, the PS MFH and the PS MFIN, officials of the FMS, including its CEO, and Camilleri Preziosi Advocates in their capacity as the Government's legal consultants. The incumbent Prime Minister was also involved in key negotiation meetings.
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. The main finding of this report related to how the Government's prior Agreement with the VGH skewed and vitiated the process of award of the concession.
14 July 2020	The QAB reconvened on 14 July 2020 yet was suspended shortly thereafter following another surge in COVID-19 levels.
22 July 2020	Initial meetings were held in July 2020, with particular reference made to a meeting held at the OPM on 22 July 2020 during which the parties agreed on a set of high-level points of agreement that was to serve as the basis for future discussion.

Date	Key event
28 July 2020	The NAO published an addendum to the first part of its audit. The focus of this publication was an MoU that Government had entered into with third parties prior to the issue of the RfP that indicated that the process leading to the concession was staged and deceitful.
30 October 2020	Discussions between the Government and the SHC intensified between October and December 2020. A joint position paper dated 30 October 2020 captured the high-level principles acknowledged by the parties as reflecting that agreed in relation to a termination agreement and a management services agreement. End November 2020 was set as the informal deadline for the conclusion of discussions.
November 2020	Although the deadline of November 2020 was not achieved, the parties were confident of concluding negotiations and finalising the agreements and set 18 December 2020 as the date for the signing of the renegotiated concession agreements.
18 December 2020	Memorandum to Cabinet submitted by the Minister for Health and the Minister for Finance proposing the restructuring of the contractual framework regulating the concession. Envisaged in this respect was the termination of all existing concession-related agreements through entry into the Termination, Settlement and Arbitration Agreement. Subsequent to this, the Government and the SHC were to enter into the Termination Compensation Agreement, the Deed of Emphyteutical Rescission and the Management Services Agreement.
18 December 2020	Cabinet approved the memorandum put forward relating to the restructuring of the concession's contractual framework and authorised the continuation of the necessary and appropriate procedures that would lead to the finalisation of the agreements that it had endorsed.
22/23 December 2020	Although the Government earmarked 22 or 23 December 2020 for the signing of the Cabinet-endorsed agreements, these were not entered into. While disagreement regarding the capital expenditure and management fee payable by Government persisted, the main reasons for non-ratification related to issues of legality emanating from guidance sourced by the Government from the State Advocate and the DoC. The proposed restructuring was deemed not permissible because it would have fundamentally altered the nature of the concession. This impasse brought to an end the second attempt to renegotiate the concession.
30 December 2020	Another report, titled Masterplan Functional Content, was presented, providing a summary of the SLH's functional content and a breakdown of the inpatient, allied health and diagnostic and treatment sections within the Hospital.
End 2020	In 2020, the Government paid the SHC a total fee of €49,329,245.
End 2020	In 2020, the Steward Malta Group registered a profit of €6,053,585.
25 January 2021	SHC International (Malta) Ltd was registered.
29 January 2021	The QAB was reconvened and continued to meet regularly until end 2021, that is, the period under review.
January 2021	MTrace plc, a subsidiary of SHC International Ltd, was acquired by Malta Enterprise.

Date	Key event
15 February 2021	The Minister for Health and the Minister for Finance and Employment submitted a memorandum to Cabinet seeking its authorisation for a settlement agreement between Government and the SHC. The advice of the State Advocate had been sought on the matter. Provided that the SHC endorsed such an agreement, the Government was to pay a sum exceeding €5,000,000 as settlement of the claim related to the healthcare budget increase under the HSDA, and a sum exceeding €20,000,000 as settlement of the claim related to the LSA.
15 February 2021	Cabinet approved the memorandum submitted by the Minister for Health and the Minister for Finance and Employment, which identified the amounts payable by the Government to the Concessionaire by way of settlement that could then lead to final agreement.
19 February 2021	A settlement agreement in respect of the Cabinet-sanctioned HSDA- and LSA-related claims was entered into. The sum paid by the Government to the SHC exceeded €25,000,000 and covered additional payments arising up to end 2020.
April 2021	A third attempt at renegotiating the concession was made by the Government and the SHC in April 2021 and extended till June 2021. The interlocutors on behalf of the parties remained mostly the same, with INDIS Malta Ltd and the BOV notable additions in this respect. The point of departure of these discussions was the agreements that had been prepared in the previous round of negotiations; however, one major difference was the role of the SHC in the redevelopment of the sites. Under this revised arrangement, the SHC would no longer be responsible for construction, but retain the role of designer and project manager, with the construction contractor engaged directly by the Government.
26 April 2021	Grant Thornton – engaged by the Government to undertake a due diligence exercise to identify any links that existed between the assets and the SHC – sought information from the SHC regarding the transfer of SHC International Holdings Ltd (a UK-based entity) to SHC International SL (a Spanish-based entity).
May 2021	The MFH paid €2,572,688 in relation to the LSA adjustment for Q1 2021. The adjustments for Q2 to Q4 2021 remained pending as at April 2022 and amounted to €6,648,552.
May 2021	Negotiations between the Government and the SHC during this period were intense, with the SHC seeking to conclude by end May 2021. The Minister for Health contended that this was not possible yet proposed 8 June 2021 as the date for signing of the revised agreements.
31 May 2021	Eurostat carried out another EDP dialogue visit to Malta between 31 May 2021 and 1 June 2021.
4 June 2021	The Government expressed reservations regarding the signing of a heads of terms in connection with the design and project management agreement yet indicated that full and final agreements were to be finalised and signed concurrently later in June.

Date	Key event
August 2021	According to the SHC, discussions between the Government and the Concessionaire did not resume after June 2021 and that around August 2021, the Government informed the SHC that it was not willing to renegotiate the concession. While the SHC was unaware as to the reason why discussions were aborted, the Minister for Health indicated that Government's prior concerns relating to the legality of the proposed restructuring persisted. This development marked the end of the third attempt to renegotiate the concession.
3 November 2021	In a meeting of Cabinet, the Minister for Health stated that the Government and the SHC did not want to continue to operate in terms of the existing contracts. He indicated that there were three options that could be considered, that is, the SHC foregoes the concession with no payments due by Government, Government ends the concession and be liable to pay the sums imposed in the concession agreements, or settlement is reached between the parties on how the contractual ties are severed and what payments are due. The Minister for Health indicated that, until a more definite solution was found, the MFH would be more demanding in ascertaining that the commitments of the SHC were honoured and noted that there ought to be no negotiations on revisions to the concession. Cabinet endorsed that proposed.
7 December 2021	Companies House gave notice to SHC International Holdings Ltd (UK) that it would be struck off the Register and dissolved within two months unless cause to the contrary was provided.
10 December 2021	The HCC was constituted independent of any other related committee towards the end of 2021, with its first meeting held on 10 December 2021. The previous meeting of the HCC was that of 20 November 2019.
14 December 2021	The NAO published the second part of its audit of matters relating to the concession awarded to the VGH. This part entailed a review of the contractual framework and its implementation by the VGH. Highlighted in the audit report were the several facets of failure registered with respect to this concession, most notably seen in the lack of governance and poor management that characterised the project, the fact that none of the major concession milestones were achieved, and the substantial and one-sided revisions made to the contractual framework that eroded the value for money that Government intended to secure.
End 2021	In 2021, the Government paid the SHC a total fee of €87,548,722. This included €27,933,076 in settlement of outstanding claims arising of the HSDA and the LSA. In total, from 2016 to 2021, the VGH and the SHC were comprehensively paid €267,568,404. If one were to include the salaries paid directly by the Government (€188,510,970), the cost incurred with respect to the GGH, the KGRH and the SLH between 2016 and 2021 was that of €456,079,372.
End 2021	Despite the SHC having taken over control of the concession in February 2018, the Concessionaire failed to provide the Government with the requisite parent company guarantee from the point of assuming control until, at least, the end of the period under review.

Date	Key event
7 January 2022	The first meeting of the HMC was held on 7 January 2022.
27 January 2022	Pursuant to the 31 May 2021 EDP dialogue visit, Eurostat published its report wherein reference was made to the ongoing attempts to renegotiate the concession. The NSO informed Eurostat that the Government would be taking over the project while the SHC would continue to manage the assets.
22 February 2022	With SHC International Holdings Ltd (UK) struck off the Register on 15 February 2022, the company was dissolved.
17 March 2022	The PMB was reconstituted following a near 30-month hiatus.
4 April 2022	Local media reports highlighted the dissolution of SHC International Holdings Ltd (UK). This reporting triggered enquiries by the NAO with the MBR, the MFH and the SHC.
18 April 2022	Documentation was submitted by the SHC to the MFH capturing the corporate structure as at 23 March 2022. Indicated in this respect was that SHC International Ltd (Malta) was owned by SHC International SL (Spain), in turn owned by SHC International Investors LLC (USA), which was finally owned by the US-registered Santa Clara Holdings LLC, with Class B shares held by management. The UBO of Santa Clara Holdings LLC was Dr Ralph de la Torre.
21 April 2022	SHC International Ltd (Malta) submitted a Form T informing the MBR of the transfer of shares from SHC International Holdings Ltd (UK) to Cordiant Healthcare Services KSA SL (Spain). Of note was that the transfer was originally made on 12 May 2020. The Form T submitted by the SHC bore several irregularities.
18 May 2022	In a plenary session of Parliament, the Minister for Health stated that the SHC was bound by the contractual framework originally entered into by the VGH, thereby imparting that Government was against the renegotiation of the concession.
20 May 2022	The SHC submitted further information to the MBR seeking to address the inconsistencies that emerged following its earlier submission of the Form T.
June 2022	During the period reported on, the MMB was not set up. This Board was tasked with planning and overseeing maintenance to be carried out by the SHC at the sites.
1 July 2022	Following referral by the MBR on 17 June 2022, the State Advocate advised the Registry that the submissions by the SHC could not be accepted unless the numerous mistakes were rectified in a manner deemed acceptable by the MBR.
25 August 2022	An amended Form T together with other documents was submitted by the SHC to the MBR whereby past submissions were adjusted to fit the revised narrative of the SHC. The MBR fined the SHC €8,474.
August 2022	The balance due by the SHC in terms of ground rent payable for the sites amounted to €619,500.
24 February 2023	In its judgement, the Court rescinded and annulled the Emphyteutical Deed, the SCA, the HSDA and the LSA and all amendments thereto. The Court ordered the return of the SLH, the KGRH and the GGH to the Government.
15 March 2023	Steward Malta Assets Ltd, Steward Malta Management Ltd and Steward Malta Ltd filed an appeal to revoke the Court's ruling.
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.

9.1.2 This report builds on Parts 1 and 2 of the NAO's review of the concession awarded by the Government for the redevelopment, maintenance, management and operation of the GGH, the KGRH and the SLH to the VGH in 2015. The consideration of context is important as the developments reported on in this Part ought not to be seen in isolation. Several of the difficulties faced by the Government and the SHC can be traced to shortcomings in the process of procurement, selection and contracting of this concession. The negotiations undertaken were intended to rectify a concession that was ill-defined in the tendering process, to mitigate the effect of selection of the VGH – a Concessionaire with no experience or resources to undertake such a commitment, and address the myriad contractual anomalies and deficiencies that resulted in the disproportionate allocation of risk being borne by the Government and the setting of certain obligations on the Concessionaire that were not realisable or feasible. It is against this backdrop of failure that the NAO continues its reporting of the concession, which account resumes with the introduction of the SHC in place of the VGH.

9.2 The transfer of the concession

Initial interactions between the Government and Steward Health Care

9.2.1 The NAO established that the first interaction between the Government and the SHC regarding the possible transfer of the concession held by the VGH occurred in September 2017. The interlocutor acting on behalf of the Government in this initial interaction was the Chief of Staff OPM, who was accompanying the Prime Minister on an official visit in New York, while the SHC was represented by the CEO SHC International. This information was provided by the SHC.

9.2.2 The Chief of Staff OPM confirmed this initial interaction and indicated that it was the SHC who had initiated contact with the Government with the intention of taking control of the concession. The Minister for Health corroborated that indicated by the Chief of Staff OPM and the SHC in that the meeting in New York was the point of contact between the Government and the SHC. According to the Minister for Health, it was during this meeting that the SHC referred to its ongoing discussions with the VGH and enquired whether the Government would be willing to endorse a change in control. The Minister for Health's understanding was that it was not the Government that had initiated contact with the SHC, but it was the CEO SHC International who was the link between the VGH and the SHC, and who would also be the link between the SHC and the Government. A different account was provided by the Prime Minister who indicated that the VGH had informed the Government that the SHC was interested in the concession and referred to a meeting held between the VGH and the Chief of Staff OPM during which the latter was informed that discussions between the VGH and the SHC were at an advanced stage. In submissions to this Office, the Prime Minister made no reference to the September 2017 meeting between the Chief of Staff OPM and the CEO SHC International.

9.2.3 Another version of events, particularly in terms of which party approached the other, was that of the SHC, that maintained that the Government had made the initial approach for the SHC to take over the concession. Expanding on the context to the Government's willingness to engage with the SHC, the CEO SHC International referred to the serious concerns about the VGH that had been publicly expressed, primarily in view of the VGH's inability to settle dues and its failure to fulfil contractual obligations.

9.2.4 Another contrasting perspective was that provided to the NAO by the Director VGH, who negated that it was the VGH that approached the Government or the SHC to transfer the concession. Elaborating in this respect, the Director VGH contested reports that attributed the VGH's inability to secure financing as a determinant to the change of control of the concession. The Director VGH indicated that, in early 2017, discussions were held with the SHC regarding the possibility of the latter becoming an investor in the VGH; however, these discussions fell through.

9.2.5 The conflicting perspectives render it impossible for the NAO to establish with certainty the precise nature of the crucial initial interactions between the Government and the SHC, particularly in terms of whether it was the Government that approached the SHC (as attested by the SHC), the SHC that approached the Government (the perspective put forward by the Chief of Staff OPM, the Minister for Health and the VGH) or the VGH that approached the SHC or Government (the Prime Minister's understanding). While the VGH or the SHC approaching the Government with the intent to transfer or assume control of the concession fell within the parameters of the contractual framework, the scenario where the Government approached a specific economic operator to replace an incumbent contractor does not fit within the provisions of the concession.

9.2.6 That stated by the Minister for Health regarding the pivotal role played by the CEO SHC International in the initial interactions of the Government, the VGH and the SHC was of interest to the NAO. The CEO SHC International occupied a senior position within the SHC until June 2016, when he assumed the role of CEO VGH. He occupied this post until August 2017, after which he returned to the SHC as its CEO and President. The relevance of this is that the move from the VGH to the SHC coincided with the commencement of interaction between the SHC and the Government regarding the possible takeover of the concession. The SHC conceded that the past employment of the CEO SHC International with the VGH and his experience of the concession were relevant to the SHC's consideration of assuming control of the concession. The Director VGH expressed misgivings on the anomalous role played by the CEO VGH, later appointed the CEO SHC International, in the process leading to the change of control of the concession. According to the Director VGH, these misgivings were validated when the CEO VGH was engaged by the SHC as its CEO immediately following his resignation from the VGH and at the precise instance when manoeuvres to transfer control of the concession commenced. Any inferences that could be drawn from the parallels between the changing control of the concession and the moves of the CEO SHC International from the SHC to the VGH and back remain debatable.

9.2.7 Following the September 2017 New York interaction, the Government and the SHC held a series of meetings. The Government retained no record of these interactions with the SHC. Notwithstanding this, the NAO established that the Prime Minister directed the Minister for Tourism to meet with the SHC over its possible takeover of the concession, which meeting took place in London in early November 2017.

9.2.8 The Prime Minister's decision for the Government to be represented by the MOT rather than the MFH in these early interactions with the SHC drew the NAO's concern, for the concession was one that primarily concerned public health services, rendering the omission of the MFH ambiguous. An unfortunate parallel may be drawn between this omission and the Government's prior exclusion of the MFH from the process that had led to the selection of the VGH as the concessionaire. The justification put forward by the Prime Minister for discussions with the SHC to be solely undertaken by the MOT, at the exclusion of the MFH, was not deemed convincing by the NAO. While the Prime Minister contended that the MFH was informed of developments, this Office is of the understanding that the MFH ought to have been involved in the exchanges of Government with the SHC.

9.2.9 Given the central role that the Minister for Tourism fulfilled in the Government's initial interactions with the SHC, the NAO sought to obtain his views. Despite several attempts, the Minister did not respond to any of the requests made by this Office. It is with the gravest concern that the NAO views the failure of the Minister for Tourism to cooperate in this audit as inexcusable, compounded no less by the centrality of his role in the concession. The shirking of accountability on the part of the Minister for Tourism hampered this Office in its understanding of the initial developments that led to the concession being taken over by the SHC and impacted other aspects for which he assumed responsibility in relation thereto, most notably in authorising the change of control and in representing Government as guarantor for funds secured by the SHC. In addition, this Office could not verify assertions made by others regarding the role played by the Minister for Tourism in this concession. The NAO holds a bleak view of the Minister for Tourism's conduct in this respect, for ministers of Government and public officials who have acted in the interests of the Government should find no difficulty in accounting for their decisions and actions. The action on the part of the Minister for Tourism in not cooperating with the NAO was deemed deplorable.

9.2.10 Another party deemed conspicuously absent by the NAO in the initial interactions between the Government and the SHC was the VGH. The incongruity of this situation arises from the fact that the VGH, at the time, held control of the concession, hence rendering its involvement critical. The dynamic that emerges in this context based on the information made available is one where the Government was discussing the assignment of a concession that had already been awarded to another party, while the SHC was willing to displace the incumbent concessionaire.

9.2.11 An element of explanation as to the absence of the VGH in interactions between the Government and the SHC was provided to the NAO by the Director VGH, who claimed that he was forced to transfer the shares of the VGH under duress, despite him having no intention to do so. The Director VGH indicated his willingness to disclose further information subject to sufficient legal safeguards being provided, which safeguards were not within the powers of this Office. In this context, the Director VGH was reluctant to elaborate on the nature of and who exerted the duress. No evidence substantiating that alleged was provided by the Director VGH to this Office. If that alleged is true, then the actions of those involved in exerting duress draw the NAO's gravest concerns. Although the Director VGH did not disclose further information relating to the issue of duress, he alleged there were instances when the Government thwarted efforts at securing financing by withholding documentation required by the bank through which the financing was sought. In this respect, the Director VGH asserted that the Government was served with notice that it was in default of its obligations under the concession.

9.2.12 The SHC informed the NAO that another meeting was held in London on 14 November 2017. In attendance were representatives of the SHC, and Mifsud Bonnici Advocates and RSM Malta on behalf of the Government. The SHC argued that the Government's involvement in what would otherwise be a private transaction with the VGH was to be seen in terms of Government's role as the granting authority and the commitment sought from it by the SHC to restructure the concession to make it bankable. No records of this meeting were retained by the Government or provided by the SHC, rendering the verification of that asserted impossible.

9.2.13 Several other meetings were held by the Government and the SHC between November 2017 and February 2018. The SHC indicated that the Government was generally represented by the Minister for Tourism, the Chief of Staff OPM, and Mifsud Bonnici Advocates and RSM Malta, with the Minister for Health attending on one occasion towards the end of this series of meetings. As regards the SHC, it was represented by the CEO SHC International, other officials and the company's legal counsel. According to the SHC, the key theme discussed during these meetings was the conditions under which the concession could be assumed by the SHC, with its understanding being that the Government would allow the Concessionaire to renegotiate the concession agreements, especially aspects that were not bankable or financeable. The NAO was not provided with a record of these meetings and therefore could not ascertain that discussed.

9.2.14 Although the absence of any record of meetings held during this period limited the NAO's understanding of developments, this situation was partly mitigated by correspondence submitted by the SHC to the Government at the time and provided to this Office by the SHC. Several points of interest emerge through this glimpse into proceedings made possible by the SHC. Evident was that the SHC was aware of the Government's intention to meet with the Director VGH to terminate its relations with the Concessionaire and threaten criminal action, further obfuscating the confusing dynamic that existed in the relationship between the Government, the VGH and the SHC. Other threads of correspondence highlight the haste with which the SHC was constrained to act to take over the concession.

9.2.15 Notwithstanding that, at face value, the urgency imparted by the Government was unwarranted, this sense of haste emerged as a consistent theme in the correspondence made available to the NAO by the SHC. The SHC's acceptance of the impossibly tight timeframes set by the Government resulted in it forfeiting any form of due diligence, thereby assuming the extraordinary risk that this concession evidently carried. The SHC willingly accepted to take control over a company whose liabilities were entirely unknown. To compound matters, the SHC was aware of the high risk associated with the Director VGH, evidence of such awareness coming to the fore in the correspondence made available to this Office. The NAO fails to reconcile how a reputable firm such as the SHC would be willing to assume control over a concession that was fraught with controversy, acquire a company whose track record was abysmal, whose finances were undisclosed and unknown and that was led by an individual who elicited mistrust, and how despite all these facts being known to the SHC at the time of its interest in taking over the concession, proceeded regardless. Not only did the SHC proceed to acquire the VGH, but it accepted the Government's pressure to conclude within a limited timeframe, which pressure effectively resulted in the SHC foregoing the evidently required due diligence reviews that ought to have been carried out. It is unclear to the NAO whether any assurances were made by the Government regarding the renegotiation of the concession, as claimed by the SHC, and to what extent these emboldened the latter to assume risks associated with the opacity of the VGH and the feasibility of the concession, which risks it ought to have been more cautious to take on.

9.2.16 What interest served Government in concluding this transaction within such a limited timeframe remained obscure to the NAO. The failure of the Minister for Tourism to attend to any request for information made by the NAO impeded this Office from forming a comprehensive understanding of developments. In addition, the terse reply by the Chief of Staff OPM provided no insight into the mindset of Government when advocating for the SHC to conclude with such haste. This Office considered the actions of the Minister for Tourism and the Chief of Staff OPM as devoid of the expected standards of accountability and transparency that ought to guide Government officials.

9.2.17 In conclusion, the NAO is cognisant of the fact that the account of events leading to the change of control of the concession is far from complete, with the Government's perspective limitedly captured despite efforts by this Office. The differing accounts and the limited information provided hindered this Office from forming a complete understanding of this early stage in the process of change in control.

A request to relinquish control

9.2.18 With discussions between the Government and the SHC underway, on 27 December 2017, the VGH requested the Minister for Tourism to, on behalf of the Government, provide his consent for the sale by Bluestone Investments Malta Ltd of shares in issue in VGH Ltd to SHC International Ltd. A similar request was made to MIP Ltd on the same day. Receipt of this request triggered the PS MOT to commission a due diligence report.

The Government's due diligence on Steward Health Care

9.2.19 On or around 10 November 2017, Mifsud Bonnici Advocates were requested by the MOT to obtain a third-party service provider enhanced due diligence report on SHC System LLC. To this end, a report was prepared by C6 for Mifsud Bonnici Advocates, dated 1 December 2017.

9.2.20 According to the due diligence report, SHC System LLC was a limited liability company registered in Massachusetts, USA. The company was formerly known as Caritas Christi Health Care System Inc. and changed its name in November 2010 when it was acquired by the private equity firm

Cerberus Capital Management. Cited in the due diligence report was that Mr Stephen Feinberg was the principal owner of SHC System LLC. Other shareholders in SHC System LLC were SHC Holdings LLC and Medical Properties Trust Inc. Stated in the due diligence report was that, in financial year 2015, SHC System LLC reported a profit of $116 million (€97.9 million) and net assets totalling $131 million (€110.5 million).

9.2.21 Several risk factors were identified by C6. Considerable concerns were raised with respect to several senior executives, identified as possible PEPs. According to the due diligence report, Mr Stephen Feinberg had close ties to a former US President and his administration and could therefore be considered a PEP by association. In terms of issues relating to law enforcement, financial regulation and litigation, the due diligence identified several court cases where some of the SHC System LLC's directors were defendants. As regards reputational issues and adverse media, these mainly concerned the company's failure to submit timely financial data. A finding relating to jurisdiction corruption risks was identified, relating to recommendations made by the FATF; however, no details were reported in the due diligence. No risks were identified by C6 regarding terrorism, sanctions and restrictive measures, issues related to insolvency, bankruptcy or disqualified director, and bribery and corruption that implicated SHC System LLC.

9.2.22 The NAO enquired with the Prime Minister whether he had any connection with the persons or interests identified in relation to the SHC in the due diligence report. The Prime Minister denied having any such connections and indicated that the only person who he knew was the CEO SHC International, given that he previously occupied the post of CEO VGH. The Prime Minister informed this Office that he generally relied on the outcome of such due diligence as relayed to him. However, in this case, he had informally consulted with the American Government, which gave a glowing endorsement of the SHC.

Government approves the change in control

9.2.23 The request by the VGH for the sale of its shares to the SHC, dated 27 December 2017, was approved by the Minister for Tourism on 29 December 2017. On 3 January 2018, the CEO MIP Ltd also endorsed the request by the VGH in terms of the Emphyteutical Deed entered into between MIP Ltd and VGH Assets Ltd, with control of the sites thereby transferred to the SHC.

9.2.24 Concerns immediately emerge in relation to the authorisation provided by the Government. Evident is the unorthodox proximity between the request by the VGH and the approval of the Minister for Tourism and that of MIP Ltd. The haste with which the Minister for Tourism and the CEO MIP Ltd authorised the requests by the VGH assumes greater relevance when one considers that the matter had not yet been referred to Cabinet, implying that the approvals were granted unilaterally and lacked the appropriate sanction. The requests by the VGH were only discussed in Cabinet on 9 January 2018, days after the approvals by the Minister for Tourism and the CEO MIP Ltd had already been granted.

9.2.25 A memorandum to Cabinet was submitted by the Minister for Tourism on 9 January 2018, wherein a request was made for the ratification for the extension of the longstop date for financial close and the transfer of the shares held by Bluestone Investments Malta Ltd in VGH Ltd to SHC International Ltd. The Cabinet approved that proposed on 9 January 2018.

9.2.26 Explanations were sought by the NAO as to the redundant ratification by Cabinet. The Prime Minister informed this Office that he was aware of and agreed with the approval that was given, arguing that the authorisation by Cabinet captured the tail-end of discussions held. An element of corroboration emerged in records of the Cabinet meeting held on 19 December 2017, wherein the Prime Minister indicated that there existed the possibility of positive developments in connection with the hospitals' concession. The NAO was unable to ascertain the extent of information divulged to Cabinet during this meeting owing to the succinct and cryptic nature of the minutes retained. While the Prime Minister maintained that responsibility for the decision was ultimately his, he referred to the involvement of the MFH, MFIN and the MOT.

9.2.27 While efforts to seek the views of MFIN proved to no avail, the perspective provided by the Minister for Health and the MFH starkly contrasted with the narrative put forward by the Prime Minister. The Minister for Health indicated that the MFH was not involved in the approval granted by the Government for the transfer of the shares and therefore the change of control of the concession from the VGH to the SHC. The Minister for Health asserted that responsibility for this aspect of the concession rested with the MOT, attested by the fact that the Government's consent for the change of control was signed by the Minister for Tourism. The MFH corroborated that stated by the Minister for Health, maintaining that the Ministry became aware of the change of control through the media.

9.2.28 Given the conflicting perspectives and the limited information provided, the NAO was unable to ascertain the extent of Cabinet's awareness of the transfer of the concession prior to its approval, and the level of involvement, if any, of the MFH, MFIN and the MOT. In this Office's opinion, parallels may be drawn between the incoherent approach adopted by the Government in its original grant of the concession to the VGH and its subsequent consent for the transfer of the same concession to the SHC.

9.2.29 The basis of the authorisation granted by the MIP Ltd, later restructured as INDIS Malta Ltd, remained equally nebulous. INDIS Malta Ltd notified the NAO that no record of the rationale underlying the approval granted to the VGH could be traced. Moreover, no information on whether the MIP Ltd consulted with the Government prior to approval was provided to this Office. In this Office's understanding, the MIP Ltd ought to have records of its consultations with the Government prior to its granting of consent to the VGH. The consent afforded by the MIP Ltd implied that control over the sites of the GGH, the KGRH and the SLH shifted from one party to another, rendering it highly unlikely that it acted unilaterally. Failure to provide the NAO with the relevant records concerning the consultations held with the Government detracts from the expected level of accountability and transparency.

9.2.30 With the authorisation by the Government secured in the form of the approvals of the Minister for Tourism and the MIP Ltd, the acquisition of the concession was announced by the SHC on 20 February 2018.

Other developments prior to the change of control

9.2.31 The NAO sought to establish what developments took place between the approval for the transfer of shares granted by the Government to the VGH on 29 December 2017 and the actual transfer to the SHC on 15 February 2018. As was the case in earlier phases of discussions between the parties, the NAO's visibility over the Government's role and actions in this respect remained obscured, a situation mainly attributable to the limited information provided to this Office by the Government officials involved in critical interactions with the VGH and the SHC. The Prime Minister and the Chief of Staff OPM were frugal in their submissions to the NAO. The Prime Minister argued that responsibility for discussions rested with the ministers concerned and that his role was that of endorsing, or otherwise, decisions reached. On the other hand, the Chief of Staff OPM did not provide any insight into his involvement other than reiterating that he acted in his official capacity. As regards the Minister for Tourism, his refusal to cooperate with the NAO limited this Office in establishing his involvement at this critical juncture.

9.2.32 An element of understanding of what was happening during this period was obtained through correspondence submitted at the time by the SHC and provided to the NAO. Through the review of this correspondence, ample evidence of the SHC's mistrust of the Director VGH, its awareness of the shambolic state that the VGH was in, its cognisance that more time would ordinarily be required to conclude such a transaction and that the transaction was to be seen in the context of a seller who could not warrant his business, emerged. The SHC attempted to mitigate these risks through assurances and waivers sought from the Government, such as the temporary and conditional release of the performance bond, the introduction of a standstill period, the deferral of payment of taxes and the capping of liabilities. Despite all these red flags, the SHC ploughed on regardless, driven recklessly forward by a Government that – for some reason unknown to the NAO – was bent on the hasty resolution of this transaction. The disjointedness of Government emerges most clearly in the correspondence submitted by the CEO SHC International to the Chief of Staff OPM, wherein the former sought the clearance of the latter on whether to disclose any information regarding progress on discussions to the Minister for Health. Aside from the absurdity of this correspondence, the guarded approach to the disclosure of information to the Minister for Health confirms that stated to the NAO by the Minister in terms of his non-involvement in the transfer of the concession and contradicts that stated by the Prime Minister.

9.2.33 Other correspondence between the CEO SHC International and the Chief of Staff OPM that drew the NAO's concern centred around the involvement of Mr Shaukat Ali and Mr Asad Ali. In submissions made to this Office, the Director VGH indicated that, in 2015, Mr Shaukat Ali was employed as a consultant to the VGH following a recommendation by the Chief of Staff OPM. Mr Shaukat Ali then recommended his son, Mr Asad Ali, who was also employed by the VGH. It is pertinent to note that Mr Shaukat Ali was a signatory to the MoU entered into on 10 October 2014 by the Government and the developers and operators of a project that bore significant similarities to the concession that would eventually be awarded to the VGH. Reported in an addendum to Part 1 of the NAO's report on the concession was that the overlap in terms of the nature of the project and the identity of the investors strongly supported this Office's understanding that the issuance of the RfP, and therefore the subsequent award of the concession, was orchestrated to deceive. The NAO's concerns regarding the integrity of this concession resonate with the ample press coverage alleging the substantial payments that Mr Shaukat Ali, Mr Asad Ali and other family members, directly and through companies that they were involved in, reportedly received from the VGH and the SHC. The central role of the Chief of Staff OPM, as highlighted by the Director VGH, would aggravate these concerns.

9.2.34 While the NAO fails to reconcile how a reputable firm such as the SHC was willing to assume control over a concession that was fraught with controversy, of a company whose track record was abysmal, whose finances were undisclosed and unknown, that was led by an individual who elicited mistrust, and was pressured to do so by Government within an unreasonable timeframe and without undertaking the evidently required due diligence reviews; when considered from the perspective of the Government, the haste to conclude the change of control is even less coherent. What interest served Government in concluding this transaction within the narrowest of timeframes remained obscure to the NAO. The failure of key officials of Government, namely the then Chief of Staff OPM and the Minister for Tourism to provide any information impeded this Office from forming a comprehensive understanding of developments and heightens concern that Government's interests were not served. In the NAO's opinion, the irrationality driving the Government and the SHC in concluding this transaction lacked coherence and resultantly cast doubt on the conduct of the Government officials involved.

The transfer of shareholding

9.2.35 Matters concerning the change of control of the concession came to a close on 15 February 2018, when the CEO SHC International submitted correspondence to the Minister for Tourism wherein the proposed completion of the acquisition of the VGH Group and associated matters were raised. In this correspondence the SHC indicated that it was of the understanding that the Government would work with it to identify the critical works and services under the concession agreements to ensure the SHC's alignment of priorities and requirements with those of Government; to ensure efficient implementation and effect the changes as may be agreed to in terms of the SCA; and use its endeavours to facilitate the SHC's acquisition of the VGH. The Minister for Tourism endorsed that requested by the SHC.

9.2.36 Notwithstanding this apparent agreement, the NAO noted that different perspectives of understanding subsequently emerged in terms of what was agreed to. According to the PS MOT, the Government and the SHC did not enter into an agreement specifically to renegotiate the concession. In its consent, the Government committed to assist the SHC to ensure a smooth transition and to work collaboratively to achieve or improve on the project's objectives. On the other hand, the SHC's understanding of the Government's acknowledgement of this letter extended beyond assistance and collaboration, for the letter referred to the implementation of necessary changes as may be agreed by the parties in terms of the SCA. Hence, according to the SHC, the Government's endorsement of this letter signified its willingness to engage in negotiations to restructure the concession. In the NAO's opinion, insofar as the envisaged changes to the concession were within the terms of the SCA, then no concerns emerge; however, the changes advocated through negotiations that would ensue went beyond that contemplated in this Agreement and it is this key departure that would impede resolution between the Government and the SHC.

9.2.37 Through reference to records held at the MBR, the NAO established that Bluestone Investments Malta Ltd transferred its 1,200 shares in VGH Ltd on 16 February 2018. Of the shareholding, 1,140 shares were assigned to SHC International Ltd, while 60 shares were transferred to Dr Ashok Rattehalli. On 19 February 2018, the Prime Minister informed Cabinet that the transfer of the shares from the VGH to the SHC was effected.

9.2.38 The transfer of shares registered by the MBR reflected that agreed by the parties in the Sale and Purchase Agreement dated 21 December 2017, wherein SHC International Ltd committed to the acquisition of VGH Ltd and its subsidiaries from Bluestone Investments Malta Ltd. The NAO did not have access to this Agreement. The Director VGH indicated to this Office that the transfer was made for a nominal fee of €1; however, correspondence submitted by the SHC to the Chief of Staff OPM highlighted that the initial payment to the Director VGH was of €2,500,000. No information regarding the remaining payments made to the Director VGH was provided to the NAO.

Court proceedings

9.2.39 Immediately thereafter, that is, on 19 February 2018, the Leader of the Opposition, in his capacity as a Member of Parliament, initiated judicial action against the Prime Minister, the Attorney General, MIP Ltd, the VGH and the Lands Authority, calling for the annulment of the temporary emphyteusis of the sites at the GGH, the KGRH and the SLH, and for these hospitals to be returned to Government.

9.2.40 Cited by the Leader of the Opposition was that the properties had been transferred to the VGH on condition that these would be utilised to fulfil the obligations stipulated in the concession agreements. Since the VGH had failed to achieve the concession milestones stipulated in the SCA, it was contended that the Concessionaire did not have the right to transfer its shares to the SHC. The Leader of the Opposition argued that the SCA stipulated that the VGH only assumed the right to transfer its obligations as from three years from the fulfilment of completion milestones. Notwithstanding this, the Government had granted its authorisation for the transfer of the VGH shares.

9.2.41 On 24 February 2023, the Court rescinded and annulled the Emphyteutical Deed, the SCA, the HSDA and the LSA and all amendments thereto. In its judgement, the Court deemed that the

VGH was awarded the concession as a result of manipulation and lies solely intended to corrupt the thought and evaluation of those responsible for this choice and decision, which manipulation led to sole gain of the VGH, later the SHC, to the detriment of the Government. In addition, the Court noted that given that the contractual obligations and milestones were not achieved by the VGH, the Government was obligated not to accept any transfer of shares to the SHC and instead request the recission of the contracts based on non-adherence by the VGH. The Court indicated that the Government and the authorities involved had the obligation and duty to rescind all contracts in view of the manipulation and fraudulent actions systematically undertaken by the VGH and the SHC. As a result, the Court ordered the return of the SLH, the KGRH and the GGH to the Government.

9.2.42 Following judgement, Steward Malta Assets Ltd, Steward Malta Management Ltd and Steward Malta Ltd filed an appeal on 15 March 2023 to revoke the Court's ruling. The appellants maintained that the ruling was replete with failings that were procedural and substantive in nature, and further alleged a flawed appraisal and a superficial analysis of facts. Furthermore, the appellants contended that the decision was objectively unjust, possibly unconstitutional, and raised doubt as to its validity in terms of EU legislation. In view of this, the appellants also lodged an appeal with the European Court of Justice.

9.3 The failed attempts to revitalise the concession

Of hopeful beginnings

9.3.1 The earliest records of negotiations following the transfer of shares were dated March 2018. Through these early interactions, the SHC sought to identify the key stakeholders involved in the concession, the amendments sought in relation thereto and the implications arising therefrom. According to the SHC, aside from the construction-related elements of the concession, other aspects to be discussed were KPIs, the issue of bankability, service lines to be introduced, the proportion of public-funded versus international patient beds, and the LSA. Deemed critically important by the SHC was the renegotiation of revenue and payment mechanisms. The SHC also referred to the construction element of the project, with emphasis placed on the completion of the medical school in view of the assurances given to the Government. Of note was the SHC's emphasis that meetings between the parties were held regularly.

9.3.2 Whereas the focus of the SHC was to render the concession bankable, the primary goal of the MFH in its engagement with the Concessionaire was the address of the classification of the concession as on-government balance sheet by Eurostat. This classification – which the Government sought to avoid – resulted from the imbalance in the risks and rewards of the project between the Concessionaire and the Government, to the disadvantage of the latter. Other aspects of discussion highlighted by the MFH related to the performance guarantee, financing, insurances and ambiguities arising in connection with the LSA.

9.3.3 Of interest to the NAO – in setting the context to the initial interactions between the Government and the SHC – was the Eurostat EDP dialogue visit to Malta between 31 May 2018 and 1 June 2018, the report corresponding to which was published by Eurostat on 1 October 2018. Noted in the report was that prior to the visit by Eurostat, no major capital expenditure had yet been incurred on the project. Furthermore, the NSO informed Eurostat that the presence of a minimum revenue guarantee for the concessionaire and the Government's commitment to take over in full the concessionaire's debt in case of default led to an on-government balance sheet recording of the concession. Although only redacted agreements were made available to Eurostat, it noted that the open-ended list of force majeure events aggravated this classification. Based on these elements, Eurostat and the NSO agreed that the PPP should be classified on-government balance sheet as from the next EDP notification. In addition, Eurostat resolved to reassess the new agreements once signed.

9.3.4 Noted in the Eurostat report was reference to negotiations underway between the Government and the SHC, expected to lead to revised agreements. The contracts were expected to remain unchanged in terms of the operational obligations of the concessionaire; however, other elements, such as financing and the Government's obligation to buy minimum levels of service, were under discussion. This reference was cited by the SHC as evidence of the Government's commitment to amend and restructure the concession. Notwithstanding this, the Prime Minister maintained that such commitment was not concrete and was to be considered in terms of prevailing regulations.

9.3.5 On 5 June 2018, the Minister for Tourism requested Cabinet to authorise the exemption requested by the SHC, such that for the six-month period commencing on 1 June 2018, the performance guarantee would only be called by the Government in the event of operational breaches. This, he argued, would enable the implementation of changes required by the Government. Cabinet approved that proposed by the Minister for Tourism, who proceeded to inform the SHC of the exemption granted by the Government through correspondence dated 25 June 2018. In this regard, the Minister for Tourism indicated that it was the intention of the Government and the SHC to seek several changes to the concession agreements. The Minister for Tourism further noted that during the six-month period between July 2018 and December 2018, it was expected that all changes to the concession agreements would have been agreed on and executed. This correspondence was cited by the SHC as evidence of the Government's commitment to renegotiate the terms of the concession.

9.3.6 While the Minister for Tourism sought Cabinet's approval in relation to the exemption requested by the SHC in relation to the performance guarantee, the same cannot be said with respect to the Direct Agreement, through which the Government effectively guaranteed an overdraft facility that the Concessionaire sought to secure. Similar concerns may be expressed with respect to the Security by Title Transfer Agreement, through which Steward Malta Management Ltd assigned rights relating to payments due to it by the Government to the BOV as security. The payments in concern related to the HSDA.

9.3.7 On 22 June 2018, the Government, represented by the Minister for Tourism, Steward Malta Management Ltd, Steward Malta Assets Ltd and Steward Malta Ltd, and the BOV entered into the Direct Agreement. In the Direct Agreement, reference was made to the First Sanction Letter dated 8 May 2018, through which the BOV granted an overdraft facility of €5,000,000 to Steward Malta Management Ltd for the purpose of financing the latter's working capital requirements in connection with the concession.

9.3.8 Given that the First Sanction Letter was contingent on Government's entry into the Direct Agreement, the NAO sought to obtain a copy of the Letter through queries raised with MFIN and the MOT. Both Ministries indicated that they did not have access to the First Sanction Letter, which situation was deemed anomalous by this Office, for the Government bore a contingent liability in respect of the €5,000,000 overdraft facility made available by the BOV to the SHC and therefore ought to have had access to the Letter. Also entered into on 22 June 2018 was the Security by Title Transfer Agreement. The parties to this Agreement were Steward Malta Management Ltd, the BOV and the Government, represented by the Minister for Tourism. To secure its obligations under the First Sanction Letter, Steward Malta Management Ltd entered into the Security by Title Transfer Agreement with the BOV, whereby the former assigned the rights to payments due to it by the Government to the Bank as security.

9.3.9 Based on information made available, the NAO understood that the operational coordination of negotiations commenced towards June 2018. Although this Office was not provided with documentation corresponding to meetings held or exchanges between the parties, the MFH indicated that interaction with the SHC was continuous. On the other hand, information provided by the PS MOT indicated that the involvement of this Ministry at this stage of the process was minimal. The limited documentation provided to the NAO with respect to this period of negotiations precluded this Office from ascertaining that its understanding of negotiations was comprehensive.

Defining the intended outcome of negotiations

9.3.10 On 26 July 2018, the SHC submitted correspondence to the Government, whereby it defined the matters that it sought to discuss in relation to the concession. This correspondence was for the attention of the Minister for Tourism and the Minister for Health. Noted therein were key points relating to the process and purpose of discussions that were to ensue between the parties. Stated in this respect was that, following the acquisition of the VGH, the SHC and the Government had agreed to clarify certain matters in relation to the concession agreements. The relevant provisions of the SCA that allowed the parties to amend or waive any term of the Agreement, by written consent, provided that the nature and general scope of the SCA was not altered, were cited by the SHC as the basis for these discussions. The HSDA and the LSA contained similar provisions.

9.3.11 The headline matters proposed for discussion by the SHC in its letter of 26 July 2018 comprised the construction and development required in terms of the concession; the services, charges, other payments and the mechanism that was to regulate such transactions; the HR element;

and other matters of a legal and finance-related nature. In essence, the SHC put forward revised concession milestone completion dates, highlighted the need to discuss the scope of clinical services delivered and payments to be charged to the Government in respect thereof, sought clarity on several LSA-related matters, including the setting of a revised list of resources as a baseline, and identified numerous contractual anomalies and ambiguities that warranted clarification.

9.3.12 In submissions to the NAO, the SHC argued that the revisiting of the above headline matters was necessary to render the concession bankable following its restructuring. The SHC maintained that this project was ill-conceived from the outset in terms of its financials, and this was the reason why no financing was secured when awarded in 2015 and since. Elaborating in this respect, the SHC defined a project as bankable if it had the ability to fund itself through the revenue that it generates, sufficient to meet principal and interest on financing required to undertake the project and to compensate the concessionaire for the risk taken.

On nebulous negotiations

9.3.13 Following the correspondence submitted by the SHC on 26 July 2018, the Government set up a committee to serve as a forum for the clarification of certain contractual provisions whose interpretation was creating ambiguity. The committee was termed as the Clarification Steering Committee, with Government represented by the PS MFH, the PS MOT, a DG MFH and advisors acting on behalf of both Ministries. Attending for the SHC were representatives of its management and its legal advisors.

9.3.14 Records of Clarification Steering Committee meetings made available to the NAO corresponded to the period 8 October 2018 to 31 October 2018. Given that the next significant development was the submission of an MoU to Cabinet by the Minister for Tourism in September 2019, it is evident that other negotiations took place, over which the NAO has no visibility. The gap in records of negotiations held within this period was deemed a shortcoming in terms of the management of the process and limited the NAO's understanding of developments registered in connection with the concession. The dearth of documentation corresponding to this period of negotiations of the concession constrained this Office to rely on the recollections of those involved, several years after the fact.

9.3.15 While the necessity of the involvement of the MFH in discussions with the SHC was evident, that of the MOT was less clear. According to the PS MOT, the Ministry and its representatives were assisting in this process to ensure continuity and knowledge transfer. Nonetheless, the precise role of the MOT and the MFH in these negotiations remained unclear to the NAO.

9.3.16 An element of insight into the negotiation process was provided to the NAO by the PS MFH, who indicated that the agenda for discussions between the Government and the SHC was not structured and generally entailed the exchange of contracts as revised by the Concessionaire's legal advisors. This approach resulted in insufficient opportunity for the parties to discuss their overall priorities, the objectives that they sought to achieve, how these were to be realised and how the parties were to record progress being registered. Elaborating on this matter, the PS MFH argued that because of this approach the broader objectives of discussion between the parties were not appropriately set out during this phase of interaction. That stated by the PS MFH resonated with the NAO's understanding of this phase of negotiations, with evident shortcomings emerging from a process characterised by its lack of structure, its failure to retain records required to keep track of progress registered and its inability to align the overall objectives that the parties intended to achieve.

9.3.17 The misalignment in the ultimate aims of the Government and the SHC was pronounced in discussions relating to the Eurostat classification of the concession as an on-government balance sheet entry. According to the MFH, the Ministry sought to highlight the need to correct the imbalance in the risks and rewards of the concession, perceived by it as favourable to the SHC. On the other hand, the MFH noted that the SHC sought to introduce revisions that further aggravated the imbalance against the Government, for example through the introduction of a broader definition of what could constitute a force majeure. The drive by the SHC to revise the risk and reward model in its favour was tied to its understanding that the concession, in its existing form, was not bankable. In turn, the MFH contended that the concession was not bankable because the medical tourism component had not yet been appropriately developed.

9.3.18 Notwithstanding the instances of divergence, the MFH conceded that there were points of agreement registered with the SHC during this early phase of discussions, citing as an example its effort to revise the fixed fee model of payment for beds irrespective of use. It was through these revisions – that shifted payments away from an availability model towards a delivery model – that the Ministry sought to incentivise the SHC while simultaneously seeking to fulfil its objectives.

9.3.19 In sum, while the submission of the MoU by the Minister for Tourism in September 2019 renders evident that discussions during the period between July 2018 and September 2019 were ongoing, the NAO has little evidence of this process. It is therefore not possible for the NAO to assess whether the objectives of the Government were reached through the discussions held with the SHC. Based on the glimpses into the negotiation process elicited by the NAO from those involved, this Office concluded that the co-terminus involvement of the MOT and the MFH hindered rather than assisted the process, with the Government failing to steer the concession in a coordinated manner towards its objectives.

Into the abyss

9.3.20 In parallel with the discussions held in the Clarification Steering Committee, were developments registered relating to the SHC's obligation to submit a performance guarantee and evidence of it having secured financing. In this respect, on 15 October 2018, the Minister for Health submitted a memorandum to Cabinet seeking its approval for the Government to temporarily waive the obligations of the SHC in relation to the performance guarantee and the financing agreements stipulated as part of the conditions precedent in the SCA. On 16 October 2018, Cabinet agreed to waive these obligations until 31 December 2018.

9.3.21 The Prime Minister argued that such waivers were consented to by the Government to allow sufficient time for negotiations required for the concession to succeed and emphasised the importance of considering the concession from a broader perspective, beyond the remit of any particular ministry.

9.3.22 A grimmer understanding was imparted to the NAO by the Minister for Health. The Minister for Health informed this Office that, in the months leading to this memorandum to Cabinet, he was informed that the MOT was negotiating with the SHC, which negotiations were to result in additional payments by the Government to the Concessionaire without any increase in services. This was deemed unacceptable to the Minister for Health, who raised objections with the Prime Minister. According to the Minister for Health, the Prime Minister assigned responsibility for negotiations to him; however, the Minister for Health indicated that, despite this commitment, negotiations continued between the MOT and the SHC without his involvement. The Minister for Health explained that the SHC would hold discussions with the Minister for Tourism and utilise commitments provided by the latter as leverage in subsequent negotiations with the Minister for Health. This situation resulted in the responsibility assigned to the Minister for Health being short-lived, with the Minister for Tourism reassuming control of negotiations between the Government and the SHC.

9.3.23 The NAO's concern was drawn to that stated by the Minister for Health, who provided this Office with a glimpse into the unorthodox dynamic that persisted between the Prime Minister and the Minister for Tourism, to the detriment of the Minister for Health's ability to negotiate with the SHC. The reluctance of the Minister for Tourism to step back from interactions with the SHC was detrimental to the Government's interests, for it created a weakness in its position all to evident to the SHC, a weakness that – based on that noted by the Minister for Health – was readily exploited.

9.3.24 Further developments regarding the financing of the concession were noted in November 2018. Through the first Amendment and Restatement Agreement (Direct Agreement), entered into on 13 November 2018, the Government, represented by the Minister for Tourism, the SHC and the BOV, agreed that an overdraft facility of €5,000,000 and a loan facility of €3,000,000 made available by the latter to the Concessionaire, were to be recognised as part of the lenders' debt as regulated by the SCA. This implied that the Government would assume responsibility for this debt in the event of any default.

9.3.25 The loan facility of €3,000,000 emanated from another agreement – the Second Facility Agreement – entered into by the BOV and the SHC. Requests submitted by the NAO to the MOT and MFIN for this Agreement proved to no avail as both Ministries indicated that they had no access to it. Again, the NAO deemed this situation as anomalous, for the Government, as represented by the Minister for Tourism in the first Amendment and Restatement Agreement (Direct Agreement), assumed obligations entered into by the SHC, albeit contingent, and therefore had a direct interest in the Second Facility Agreement.

9.3.26 On 13 November 2018, the SHC, the BOV and the Government – represented by the Minister for Tourism – entered into another agreement, the first Amendment and Restatement Agreement (Security by Title Transfer). Noted in this Agreement was that, as a condition precedent to the drawdown of the Second Facility Agreement, the SHC agreed to extend the security granted by it in favour of the BOV under the Security by Title Transfer Agreement to secure the performance of its obligations under the Second Facility Agreement.

9.3.27 As alluded to earlier, aside from the amendment and restatement agreements that the Government entered into with the SHC and the BOV, the NAO had scant visibility over developments that occurred between October 2018 and July 2019. A glimpse of interaction between the Government and the SHC was provided in an indicative timeline submitted to this Office by the latter; however, aside from this limited view, the NAO was shackled in its attempts at understanding the nuances of negotiations during this period by the Government representatives' failure to retain adequate records.

9.3.28 Towards mid-2019, the Government, the SHC and the BOV entered into another Amendment and Restatement Agreement (Direct Agreement) to recognise the €28,150,000 in financing made available by the Bank to the Concessionaire as part of the lenders' debt in terms of the SCA. The implication of this recognition was that the Government would assume responsibility to honour the repayment of the facility made available in case of default. In this respect, the Government, represented by the Minister for Tourism, the SHC and the BOV entered into the second Amendment and Restatement Agreement (Direct Agreement) on 17 July 2019. Noted in this Agreement was that by virtue of the Third Facility Agreement dated 17 July 2019, the BOV granted a term loan facility to the SHC in aggregate amounting to of €28,150,000. Further noted was that the loan facility dated 19 September 2018 granted to SHC for the amount of €3,000,000 was to be refinanced and repaid in full by the Concessionaire using the funds available to it under the more recent loan facility agreement.

9.3.29 The NAO sought visibility over the Third Facility Agreement, for which the Government was effectively a guarantor, through requests directed towards the MOT and MFIN. The Agreement was not made available to this Office, with both Ministries indicating that they did not have access to it. Here too, the NAO deemed the situation as anomalous, for the Government was guaranteeing SHC loans amounting to €28,150,000, rendering the obligation as Government's should certain circumstances materialise.

9.3.30 In a similar pattern to that previously noted, on 17 July 2019, the SHC, the BOV and the Government, represented by the Minister for Tourism, entered into another Amendment and Restatement Agreement (Security by Title Transfer). As a condition precedent to the drawdown of the facilities granted by the BOV in the Third Facility Agreement, which amounted to €28,150,000, the SHC agreed to extend the security granted by it in favour of the BOV to secure the performance of the obligations as defined in the Third Facility Agreement.

9.3.31 The NAO noted that the Direct Agreement and the Security by Title Transfer Agreement, the first Amendment and Restatement Agreements, and the second Amendment and Restatement Agreements – entered into on 22 June 2018, 13 November 2018 and 17 July 2019, respectively – were not referred to Cabinet for endorsement despite the Government's role as guarantor. This Office's understanding was corroborated by the Minister for Health, who indicated that none of these agreements were brought to the attention of Cabinet.

9.3.32 The views of the Prime Minister on the matter were sought by the NAO. The Prime Minister maintained that approval for collateral regarding the concession was granted by Cabinet in July 2017, that is, a year prior, when the concession was still under the control of the VGH.

9.3.33 The endorsement referred to by the Prime Minister was traced to a memorandum submitted to Cabinet by the Minister for Tourism on 11 July 2017. In the memorandum, the Minister for Tourism referred to the direct and collateral agreements – intended to guarantee the take-up of lenders' debt in the event of a concessionaire event of default – that were being finalised as part of the VGH's financial close. These agreements considered the simultaneous exercise by the Government of its step-in rights in terms of the concession agreement. Cited in the memorandum was that recent discussions had centred around the Sovereign Wealth Fund in the context of a bankable arrangement whereby a guarantee on debt would be provided as an interim measure, with the Fund assuming the lenders' debt prior to Government step-in. To this end, Cabinet was requested to authorise the Minister for Tourism to enter into an agreement with the VGH and the Sovereign Wealth Fund, which interim arrangement would eventually be replaced by direct and collateral agreements approved previously by Cabinet. That proposed by the Minister for Tourism was approved by Cabinet on 11 July 2017.

9.3.34 The NAO retains reservations regarding that stated by the Prime Minister, that the guarantees provided by the Government to the SHC were covered by Cabinet's approval. These reservations stem from differences that emerge between the Government's guaranteeing of funds secured by the SHC through the BOV and the context presented in the memorandum submitted to Cabinet in July 2017. In essence, control of the concession had changed, with Cabinet's endorsement sought in respect of the VGH, yet guarantees provided by the Government in favour of the SHC. Although Cabinet approved the guarantee of the VGH's debt through a Sovereign Wealth Fund, understood by the NAO as reference to the National Development and Social Fund, the Government assumed a direct role in the case of the agreements entered into between the SHC, the BOV and Government. Moreover, the NAO noted that Cabinet's endorsement in 2017 was an in-principle approval, and that the specific amounts that the Government was guaranteeing were as yet undetermined and therefore not indicated to Cabinet. The materiality of the amounts guaranteed and the substantial lapse between the in-principle approval by Cabinet and entry into the tripartite agreements strengthens the NAO's stance that the matter ought to have been referred to Cabinet. Although the modality and context changed, the Government ultimately bore responsibility for the funds guaranteed.

9.3.35 The ensuing development of note following Government's entry into these several agreements with the SHC and the BOV was a memorandum submitted to Cabinet by the Minister for Tourism on 31 July 2019, whereby approval was sought for the continued temporary waiver of the SHC's obligation relative to the performance guarantee. In a meeting held on 5 August 2019, Cabinet resolved that the temporary waiver was to remain in effect until end 2019. Also noted in the excerpt of the minutes of this Cabinet meeting was the Prime Minister's declaration that matters were in their final stages – understood by the NAO as reference to the nearing conclusion of discussions ongoing between the Government and the SHC on aspects related to the concession – and that the objective was for the Government to have one strategy. In turn, the Minister for Finance explained that MFIN, the MFH and the MOT were coordinating the monitoring of that agreed.

9.3.36 On 26 August 2019, the Minister for Tourism submitted another memorandum to Cabinet, this time relating to the credit facilities that were being extended by the BOV to the SHC. Noted in this memorandum was that the BOV had expressed the need to seek further safeguards in the form of a guarantee from the Government that, if the transaction documents were declared null and void by a court, then the lenders' debt would be assumed by the Government. This was to be in respect of the three facilities granted by the BOV to the SHC, the first totalling €5,000,000, the second €3,000,000 and the third €27,900,000. The Minister for Tourism concluded that the representation requested by the BOV raised no concerns whatsoever, while the enforceability of the Bank's rights against the Government for default should the transaction documents be declared null could not be said to be solid. In this context and in view of the criticality of the credit facilities required, the Minister for Tourism recommended that Cabinet authorise the execution of the direct agreement as proposed.

9.3.37 Cabinet approved the memorandum submitted by the Minister for Tourism a day after its submission, that is, on 27 August 2019. Noted in the excerpt of the minutes of this Cabinet meeting was that the Minister for Tourism had explained why that proposed in the memorandum was put forward and indicated that the recommended course of action was pursuant to lengthy meetings with MFIN, the BOV and other unspecified stakeholders.

9.3.38 The implication of the broadening of what was to constitute a government non-rectifiable event of default was that, in the case of court-declared nullity of the concession agreement, the Government would be liable to pay the SHC €100,000,000 and the sum of the lenders' debt incurred. According to the Prime Minister, the Government consented to this guarantee so that in the case of an authority terminating the concession, the Government could step in for the SHC. This arrangement was acceptable to the BOV and the Prime Minister since the SHC would be compensated and its role in the concession would come to a close. The Prime Minister contended that the applicability of this provision did not extend to instances of default attributable to the SHC. Notwithstanding this, the Prime Minister maintained that he became aware of the Government's role as guarantor in this respect in the court proceedings instituted by the Leader of the Opposition.

9.3.39 Of concern to the NAO was the perspective put forward by the Minister for Health. In submissions to this Office, the Minister for Health recalled that the Minister for Tourism had informed Cabinet that the SHC had obtained a loan from the BOV to finance the construction of the Barts Medical School and that the Bank sought a guarantee of the loan from the Government. The Minister for Health asserted that Cabinet was not aware of the implications of the agreement that was to be entered into – other than the role of guarantor that the Government was to assume for the sums indicated – for the Minister for Tourism failed to highlight the broadening of the risk borne by the Government, now liable to pay the Concessionaire €100,000,000 and the sum of the lenders' debt in the case of court-declared nullity of the concession agreements.

9.3.40 The MFH informed the NAO that it was unaware of the developments leading to the Government's assuming of the €100,000,000 liability in case that the concession was legally declared null. Elaborating on the implications of this development, the MFH argued that its ability to seek redress for defaults arising from failures of the SHC to honour its obligations was practically curtailed, fearing that such action by the Ministry could result in a court-declared nullity of the concession, thereby triggering the payment of the €100,000,000 liability and the lenders' debt. The MFH estimated the Government's total exposure at €200,000,000. Of note to the NAO was that stated by the PS MFH, in that such an eventuality did not solely bear impact on the Government's finances, but also risked affecting service provision in its broadest sense, highlighting concern as to the possible disruption of public health services should such a situation materialise.

9.3.41 Of note to the NAO was testimony given by the PS MFIN in court proceedings relating to the legal action instituted by the Leader of the Opposition. The PS MFIN testified that the Ministry was not involved in Government's provision of these guarantees, despite that it was ordinarily the responsibility of MFIN to issue guarantees on behalf of the Government. Nevertheless, the PS MFIN challenged the terming of the facility provided to the SHC by the BOV as constituting a government guarantee yet conceded that this was a contingent liability of Government.

9.3.42 Subsequent to the endorsement by Cabinet, the Government – represented by the Minister for Tourism, the SHC and the BOV entered into the third Amendment and Restatement Agreement on 27 August 2019. Through this Agreement, the parties confirmed that if, by way of any applicable law or any final order, judgement, decision, notice, decree or any other instrument of any public body or otherwise, any of the Transaction Agreements were wholly or partially rescinded, terminated, declared to be null or void or invalid, withdrawn, annulled, cancelled, repealed or quashed, this was to be deemed a non-rectifiable government event of default.

9.3.43 The payment of €100,000,000 and the sum of the lenders' debt by the Government to the SHC in the case of court-declared nullity of the concession agreements, irrespective of whether the default was attributable to the Government or the SHC raised the NAO's gravest concern. This Office considered whether Cabinet was negligent, or otherwise, in its approval for entry into the third Amendment and Restatement Agreement by Government, given the risks that were to be borne by the Government when consenting to the terms set. In submissions to the NAO, the Prime Minister and the Minister for Health indicated that they were not aware of the implications of that endorsed. The memorandum clearly specified the Government's role as guarantor for the facilities made available by the BOV to the SHC; however, the memorandum was less clear about the implications of a court-declared nullity of the concession agreements, now tantamount to a government non-rectifiable event of default irrespective of the source of the default. In the memorandum to Cabinet, the Minister for Tourism failed to specify that the materialisation of such an event would imply that the Government would be liable to pay the SHC €100,000,000 and the sum of the lenders' debt, which by the MFH's estimations was substantially higher than the facilities made available by the BOV and cited in the memorandum. Not only was this scenario obscured in the memorandum, but the Minister for Tourism proceeded to downplay the severity of the situation and the likelihood of the BOV successfully enforcing that which Government was to commit to through entry into the third Amendment and Restatement Agreement. The omission of key facts and the understatement of others led the NAO to consider whether Cabinet was misled by the Minister for Tourism. The NAO was not privy to the discussions held by Cabinet and any clarifications that could have been provided by the Minister for Tourism. Furthermore, the Minister for Tourism ignored requests by this Office intended to elicit his perspective on matters relating to the concession, including this crucial submission to Cabinet. Nevertheless, based on the evidence at hand, that is, the memorandum to Cabinet and the testimony of the Minister for Health, the NAO is of the opinion that the Minister for Tourism misled Cabinet.

9.3.44 The misleading of Cabinet had serious ramifications for Government in its ability to safeguard its interests in relation to the concession, in its enforcement of the SHC's adherence to the obligations imposed on it by the contractual framework, in its room to manoeuvre in negotiations with the SHC, and in any definite action that could be contemplated by the Government to rescind the concession. Aggravating matters is that, in the case of a court-declared nullity not attributable to any fault of Government, the Government would still be liable to pay the SHC €100,000,000 and settle the lenders' debt incurred by the Concessionaire. How the Minister for Tourism envisaged that entry into this agreement would be of benefit to Government remains entirely perplexing.

9.3.45 Another aspect of concern to the NAO when considering the several agreements entered into by the Government, the SHC and the BOV related to whether the guarantees provided by the Government constituted state aid. This concern was heightened following entry into the Third Amended and Restated Direct Agreement, as the implication of this Agreement was the broadening of what was to constitute a government non-rectifiable event of default.

9.3.46 The NAO sought to establish whether this contingent liability was referred to the SAMB in view of possible state aid implications. Despite enquiries made by this Office to the SAMB, no replies were forthcoming. In view of the Board's failure to attend to requests for information submitted by the NAO, doubts persist as to whether Government's role as a guarantor in all the Amended and Restated Agreements breached state aid regulations. Furthermore, this Office is not aware of whether the Government considered the implications of entry into these agreements from a state aid perspective. It is in this context that the NAO disapproves of the SAMB's reluctance to provide information deemed necessary in ascertaining whether the Government's interests were jeopardised through entry into these Agreements.

A memorandum not ratified

9.3.47 On 27 September 2019, the Minister for Tourism submitted a memorandum to Cabinet, wherein reference was made to the discussions underway between the Government and the SHC intended to clarify aspects of the concession agreements and the resulting impasse that had arisen. Stated in the memorandum was that, with a view to overcoming this impasse, the parties decided to first reach agreement on certain fundamental commercial principles, which would then serve as the core for clarifying the relevant aspects of the transaction documents. To this end, an MoU was drawn and executed. Noted by the Minister for Tourism was that the MoU, while non-binding in nature, was intended to serve as the basis for more efficient and expedient discussions between the parties.

9.3.48 The MoU, dated 22 August 2019, was appended to the memorandum submitted to Cabinet and was signed by the Minister for Tourism and the CEO SHC International. Stipulated in the MoU was that it represented the high-level principles to be agreed between the SHC and the Government with a view to creating concession documents based on a fair and reasonable package for providing healthcare services. In addition, the MoU was intended to allow for practical adjustments to be made to the concession terms to provide a viable enterprise proposition for the parties to deliver value for money. Several subjects were addressed in the MoU, namely, the general principles that ought to regulate the concession, clarification as to the allocation of funds, the transition period, revenue and payments, issues arising in relation to the LSA, the OPU, drugs and consumables, the financial model, the performance bond, share capital, the parent company guarantee, the Concessionaire's accounts, the Barts Medical School and the nursing college, VAT and NI due, capital expenditure incurred, and matters relating to the concession's classification by Eurostat.

9.3.49 Based on submissions made to the NAO, it was indicated that the MFH and the MOT were involved in the drafting of the MoU, with the OPM driving this process forward. On 1 October 2019, Cabinet approved the memorandum put forward by the Minister for Tourism.

9.3.50 The NAO was not furnished with any documentation by the Government that would have afforded this Office with insight of the developments that resulted between the parties following Cabinet's authorisation of the MoU. However, a glimpse into the progress that was registered was gleaned from information provided by the SHC. The SHC informed the NAO that several meetings were held with the Government between October and November 2019, intended to render the concession bankable. According to the SHC, the main interlocutors on behalf of the Government were the Prime Minister and the Minister for Tourism; however, the involvement of the Chief of Staff OPM, other ministers and permanent secretaries was acknowledged. In turn, heading negotiations on behalf of the SHC were the CEO SHC International, the Executive Vice-President Global Operations, and its several legal advisors.

9.3.51 In the SHC's understanding, these negotiations mainly focused on the possibility of it granting, through sub-emphyteusis, certain portions of the sites that it held in terms of the concession to the Medical Properties Trust Inc. The SHC maintained that while ownership and oversight would have been retained by the Government, this arrangement would have provided it with the necessary working capital to re-invest in the concession. According to the SHC, significant progress was registered in terms of its agreement with the Medical Properties Trust Inc., which was to be brought for the consideration of Cabinet on 26 November 2019. The SHC asserted that the proposal for the sub-letting of the sites was strongly endorsed by the Government, Malta Enterprise and the BOV, and the SHC was given reassuring indications that Cabinet approval would be granted.

9.3.52 Sourced from correspondence exchanged on 22 November 2019 between the legal advisors of the SHC and the MOT was that the concession agreements were to be finalised over the coming days so that Cabinet approval be sought on 26 November 2019 and the agreements signed by not later than 12 December 2019. This exchange led the NAO to the understanding that negotiations between the Government and the SHC were drawing to a close. Given that the NAO had no visibility over the revised agreements, this Office was constrained to rely on the perspectives of the SHC and the MFH as regards to what each party intended to address through negotiations.

9.3.53 Notwithstanding agreeing to take over the concession, the SHC challenged the assumptions on which the concession was based, contending that the projections made by the VGH, in terms of financials and milestone completion dates, were not feasible. Moreover, the broader economic growth envisaged by the VGH and the forecasted substantial revenue to be generated through medical tourism were unrealisable.

9.3.54 Aside from the commitments by the Government to restructure the concession, the SHC argued that its decision to take control of the concession was deep-rooted in its assumption that the Government, particularly the MFH, acted responsibly on its duty of care and its duty to provide oversight. The SHC maintained the legitimacy of this assumption, given that its counterparty was a government, and that the Government was regularly making payments to the VGH despite the myriad deviations and irregularities. Given the severity of these deviations and irregularities, the SHC maintained that the Government must have been aware of the situation; however, deliberately failed to disclose these deficiencies. In the SHC's understanding, the Government's failure to disclose and its breach of the commitment to restructure the concession resulted in the prevailing impasse. Among other key wrongdoings highlighted by the SHC were the VHG's failure to raise the required financing, the accruing of €62,000,000 in liabilities, its inability to cover salaries from operations, its failure to prepare accounts, its non-payment of approximately €12,000,000 in NI and tax, the limited progress on capital works and the obscuring of its ownership structure. Notwithstanding the multiple breaches of warranties and obligations, and ultimately, default, the SHC noted that there was no record of any action by the Government against the VGH, with payments regularly effected instead.

9.3.55 As regards the perspective of the MFH on key issues discussed during these negotiations, the Minister for Health indicated that the main proposals by the Government sought to achieve the reclassification of the concession as an off-Government balance sheet entry. Key in this respect were two matters. First was that, instead of lump sum payments, the Government would compensate the SHC for services rendered. Second was that, on completion of the project, the MFH would pay the SHC for occupied beds rather than for all beds available.

9.3.56 That noted by the Minister for Health resonated with submissions by the MFH, wherein the Ministry indicated that the changes put forward through the MoU were to increase the risk borne by the SHC as its guaranteed revenue was to decrease since the revised payment structure included a fixed fee and payments determined by activity levels. The MFH maintained that despite that the risk borne by the SHC was to increase, it would be able to secure additional income by increasing its activity. The rationale behind these changes was to better allocate the risk and rewards of the concession, intended to result in the classification of the project as an off-Government balance sheet entry. Other aspects discussed were the performance guarantee, the increase in share capital, payment of NI contributions, bankability of the concession and the restructuring required by the SHC.

9.3.57 However, a matter that remained contentious was the establishment of the applicable annual inflation rate, necessary in determining the revisions to the amounts payable by the Government to the SHC. The MFH highlighted its grave concern regarding the effect that the annual nine per cent revision proposed by the SHC would have on public finances, contending that such an annual increase, when compounded, would have resulted in the doubling of the amount payable by the Government to the Concessionaire within seven years.

9.3.58 Another matter brought to the fore by the MFH was that the SHC was restricted by the obligations imposed through the concession agreements to provide certain services that were unsustainable. These inclusions rendered aspects of the concession as not commercially viable, since the SHC was required to make substantial investments for services with low uptake. Of note to the NAO was that observed by the MFH, that there was limited involvement of officials responsible for the operations of the hospitals, which resulted in poorly defined requirements by the Government in the RfP, and therefore decisions by the Concessionaire may have been based on financial considerations or assumptions on future developments that were unimplementable or unsustainable. According to the MFH, the SHC was likely promised that certain provisions would be amended; however, not all materialised.

9.3.59 A critical element of the concession deemed unfeasible by the SHC was medical tourism. The MFH acknowledged that there were clinical obstacles to the commercialisation of medical tourism, despite that this was the focal point of the business model put forward by the VGH. In contrast, the Minister for Health argued that Malta had significant potential for the development of medical tourism yet indicated that the SHC were not interested in this niche, with the Concessionaire seeking for the project to be funded entirely through the Government. The SHC's model was centred around the provision of health services to local communities, which model it sought to adopt in this concession. Nevertheless, the Minister for Health indicated that this community-based model was not that envisaged in the concession and that entered into. Consequently, the Minister for Health argued that the concession without medical tourism was not feasible and therefore not bankable. According to the Minister for Health, this was the crux of the problem, with the SHC's request for the Government to alter the model to suit its preference deemed not acceptable in light of public procurement regulations.

9.3.60 In terms of the SHC's financial performance, the MFH expressed scepticism as to how the Concessionaire was registering losses considering the payments made by the Government, which payments were augmented on several occasions to account for inflation, budgetary increases, compensation for pharmaceuticals and other ad hoc increments. All these payments were to be considered against the lack of investment being made by the SHC.

9.3.61 Although it was the parties' intention to conclude negotiations by end November 2019, the NAO was not provided with any evidence that the concession agreements, as revised, were referred for approval by Cabinet. A plausible explanation for this is that the Government's attention was at the time diverted to more pressing matters, with efforts intended to conclude the renegotiation of the concession taken over by events. This understanding was confirmed by the Prime Minister.

9.3.62 In fact, on 26 November 2019, the Minister for Tourism resigned. This resignation was shortly followed by that of the Prime Minister, who resigned on 1 December 2019. The NAO enquired with the Prime Minister whether he was involved in any capacity in connection with this concession following his resignation. The Prime Minister categorically denied any involvement.

9.3.63 The SHC confirmed that the first attempt at renegotiating the concession stalled due to the political upheaval prevalent in Malta at the time. Nevertheless, the SHC persisted in exploring the possible sub-emphyteusis and leaseback of the sites with the Medical Properties Trust Inc.; however, when it became evident that the political situation in Malta would not settle in the short term, these negotiations were shelved.

9.3.64 The political upheaval inadvertently ended the first phase of negotiations between the Government and the SHC. The NAO's understanding of the developments that occurred in the latter stages of this phase was hampered by the limited visibility over the process of negotiations leading to the submission of the MoU to Cabinet and the draft agreements being finalised and near to ratification. This limitation constrains the NAO from commenting on whether the Government's interests were safeguarded and whether that proposed was permissible in terms of law and in accordance with the provisions of the concession agreements. Nevertheless, this Office acknowledges that the derailment of this process was not attributable to developments directly connected to this concession, but due to broader political turmoil that coincided with a key phase in negotiations between the Government and the SHC.

A rude awakening

9.3.65 On 13 January 2020, the Hon. Robert Abela took office as Prime Minister. The change in Prime Minister marked a departure in the approach that was to be adopted by the Government in its negotiations with the SHC. Immediately evident was that Government considered terminating the contractual arrangements in place. This was the result of the incongruence that existed between that sought by the Government through the concession and the SHC's vision thereof. Nevertheless, the option to terminate was revised when the PS MOT drew the Government's attention to the Third Amended and Restated Agreement and indicated that, should the Government terminate the concession, then this could be construed as a government non-rectifiable event of default and render the Government liable to pay the sum of €100,000,000 to the SHC and assume its lenders' debt. It was at this point that the Government became aware of the broader implications of that consented to by Cabinet during its meeting of 27 August 2019, when it approved entry into the Agreement.

9.3.66 In effect, the Third Amended and Restated Agreement altered the balance in the relationship between the Government and the SHC, for the pressure that the Government could exert on the SHC was curtailed. The Government was now aware that any decisive action taken by it for failures attributable to the SHC could ultimately be detrimental to the interests of the Government in view of the liability borne in terms of the €100,000,000 payment and the lenders' debt.

9.3.67 In January 2020, Cabinet was requested to, and provided, a short-term waiver to the SHC in respect of the obligation to submit a performance guarantee and the financing agreements. The waiver granted by Cabinet extended to end February 2020 and was intended to allow the Government sufficient time to take stock of the situation concerning the concession. More pertinent to the NAO in its review of Cabinet minutes was the disagreement registered by the Minister for Health with respect to the manner in which negotiations were undertaken and agreement reached between the Government and the VGH and subsequently with the SHC.

9.3.68 Notwithstanding that the Government was considering terminating the concession, discussions between the parties continued. The Minister for Health negated that the Government provided the SHC with a commitment to revise the terms of the concession following the change in Prime Minister; however, could not vouch for negotiations undertaken during the period prior, when led by the Minister for Tourism, despite assurances provided to him by the Prime Minister and the Chief of Staff OPM that no such commitment was made. Despite these assurances, this Office is aware of correspondence submitted to the SHC on 25 June 2018 wherein the Minister for Tourism committed to the revision of the concession.

9.3.69 On 25 February 2020, Cabinet decided that the SHC was not to be granted another waiver to its obligation to submit a performance guarantee and the financing agreements. Instead, Cabinet acknowledged that the way forward for the concession for the time being was that the parties were to honour the agreements originally entered into and follow developments. Despite Cabinet's assertion that the parties were to adhere to the contractual obligations, the SHC remained in default. Notwithstanding this, in April 2020, Cabinet was constrained to approve the transfer of funds to the SHC in view of the employees who were to be paid and the medical services that were to be provided.

9.3.70 In March 2020, the first cases of COVID-19 were detected in Malta. This undoubtedly resulted in the MFH's attention being drawn to the management, mitigation and address of the spread of the virus. Inevitably, negotiations with the SHC assumed a secondary priority in this period; however, resumed in July 2020.

On negotiating the unnegotiable

9.3.71 A fresh round of discussions relating to the renegotiation of the concession commenced in mid-2020. The MFH indicated that diverse aspects relating to the contractual framework were to be discussed, while the SHC understood that the negotiations would render the concession bankable and fulfil the legitimate expectations provided to it by the Government as a condition when taking over the concession.

9.3.72 The main interlocutors acting on behalf of the Government were the Minister for Health, the Minister for Finance, the PS MFH and the PS MFIN, officials of the FMS, including its CEO, and legal consultants. The incumbent Prime Minister was also involved in key negotiation meetings. Negotiating on behalf of the SHC were the CEO SHC International, duly supported by senior management and several advisors.

9.3.73 A high-level understanding of the key elements subject to discussion during this phase of negotiations was sourced by the NAO through information provided by the SHC. Initial meetings between the parties were held in July 2020. Explored in this respect was the possible modification of the concession on three major aspects. First was that the SHC would assume responsibility for the construction-related activities. The Government was to be afforded an on- or off-balance sheet option. In addition, the Government intended to acquire the Barts Medical School, with the SHC setting a value of €35,000,000. The second aspect entailed entry into a management services agreement for 30 years and subject to renewal. The management fee that was to be paid to the SHC comprised three components, namely, a base fee, as well as quality and cost-saving incentives. The final aspect concerned termination, whereby the land and assets would return to the Government, while multiple scenarios relating to the cessation of the concession were envisaged, with payments arising and due to the SHC under such circumstances specified. The perspective of the MFH on this phase of negotiations corroborated that indicated by the SHC.

9.3.74 Over the period October to December 2020, negotiations intensified, with meetings held at the OPM in October 2020 indicative of the advanced stage of discussions, for the parties were identifying the granular details that were to be addressed in the eventual contracts. In November 2020, regular meetings were held with the Minister for Health and the newly appointed Minister for Finance and Employment, and their respective PSs, as well as satellite meetings of specific working groups. The conclusion of this process led to the drafting of near final agreements for the remodelling of the concession, structured around the high-level principles originally identified. According to the SHC, by early December 2020, the parties were so confident of concluding negotiations and finalising the agreements that 18 December 2020 was formally set as the date for the signing of the renegotiated concession agreements.

9.3.75 Negotiations between the parties culminated in the submission of a memorandum to Cabinet by the Minister for Health and the Minister for Finance on 18 December 2020. Cited in the memorandum was that the Government had embarked on extensive consultation with the SHC to reach agreement on a fresh contractual arrangement that better suited the Government's ambitions for the acute hospital in Gozo and that upgraded and expanded the rehabilitation services offered by the domestic healthcare sector. The memorandum captured the essence of the proposed revised contractual framework, namely, a Termination, Settlement and Arbitration Agreement; a Termination Compensation Agreement; a Deed of Emphyteutical Rescission; and a Management Services Agreement.

9.3.76 The Termination, Settlement and Arbitration Agreement was to release the parties from the obligations as had been established by the concession agreements that were to be repealed. Deemed important in this respect was that, through this Agreement, the Government would be relieved of the responsibility to meet payment liabilities in favour of the SHC and of the BOV, as stipulated in the tripartite agreement with the Bank. In addition, the Termination, Settlement and Arbitration Agreement was to allow the Government to purchase the Barts Medical School. Furthermore, the parties acknowledged that claims relating to the HSDA and the LSA remained outstanding and agreed to refer the matter for arbitration.

9.3.77 The Termination Compensation Agreement was to cater for the eventuality that the new Management Services Agreement and/or the Design and Build Contract were declared void or ineffective by a court. Furthermore, the Termination Compensation Agreement was to cater for the eventuality that the agreement between the Government and the SHC on the envisaged Design and Build Contract was not reached by 30 September 2021. The compensation that was payable by the Government to the SHC should such situations materialise was specified.

9.3.78 The Deed of Emphyteutical Rescission was to provide for the termination of the emphyteutical rights granted to the SHC over the hospital sites. Notwithstanding this, the SHC would be entitled to remain on the sites as required to perform its obligations and to exercise its rights in terms of a Management Services Agreement.

9.3.79 The Management Services Agreement was to regulate the provision of non-clinical hospital management services by the SHC for the remaining term of the original concession, that is, until 18 May 2046. As consideration for the provision of the services, the SHC was to be paid a management fee that was to be specified in the Agreement.

9.3.80 In the Cabinet meeting held on 18 December 2020, the Minister for Health provided an explanation of the agreement reached with the SHC, through which it was being proposed that the contractual framework regulating the Government and the Concessionaire was to be restructured. Cabinet approved the memorandum.

9.3.81 Despite Cabinet's endorsement, the agreements were not entered into on 18 December 2020. The Government informed the SHC that there were only minor issues that it sought to address internally and that it had earmarked 22 or 23 December 2020 for the signing of the agreements. Notwithstanding this, the signing did not take place on the indicated dates.

9.3.82 The SHC maintained that it was uncertain as to why the Government did not conclude negotiations during this phase yet referred to the Government consistently raising new procedural, administrative and/or commercial requirements, even on matters that had either already been agreed to in principle or which the Government should have addressed at the outset of negotiations. Elaborating in this respect, the SHC indicated that reasons cited by the Government to justify postponements included the approval by the DoC, the direction sought from the State Advocate, the further review of the design and build agreement, and the need to justify the revised agreements based on independent audit reports.

9.3.83 On the other hand, the MFH claimed that major issues of contention persisted in negotiations with the SHC. The first source of disagreement was the compensation payable by the Government for the investment already carried out. The SHC estimated the capital expenditure incurred in the construction of the Barts Medical School at €30,000,000, while the cost arrived at by the Government was significantly lower. Another issue in dispute between the Government and the SHC was the management fee due to the Concessionaire. The parties failed to agree on the fee payable, with the MFH contending that the amount requested by the SHC was excessive given that the management structure for the oversight of the hospitals had remained relatively unchanged from when the Government held direct control. The final issue cited by the MFH was the legality of the revisions being made to the concession agreements. The source of contestation arose from the SCA, which prohibited changes to the nature and general scope of the concession. The MFH indicated that this concern was highlighted by the Ministry's legal experts and the DoC, who noted that the Government could be challenged on the validity and legality of the proposed contractual framework. According to the Minister for Health, it was evident that the clearance of the DoC was necessary for changes to be made to the concession, and that these were to be legally permissible, therefore necessitating the involvement of the State Advocate. The Minister for Health noted that the DoC and the State Advocate advised that the agreed changes could not be effected, as these would constitute the Government granting a direct contract to the SHC.

9.3.84 While the NAO concedes that referral to Cabinet without agreement having been finalised on the amounts payable by the Government to the SHC for the Barts Medical School and the management fee was reasonable, in that further negotiations could have resolved such matters, the belated verification by the Government as to the legality of the proposed restructuring of the concession drew the NAO's concern. This Office maintains that determining the permissibility of that being negotiated ought to have been established at the outset and certainly prior to the approval of Cabinet. Earlier exchanges between the parties evidenced an awareness of the limitations imposed by the SCA, and possibly public procurement regulations, in changing the nature and the general scope of the concession. This awareness was not evident as negotiations proceeded, only for it to be brought to the fore at the eleventh hour.

9.3.85 The only development of note following the failure to conclude the revision of the contractual framework in December 2020 was the settlement reached on a claim that the SHC had against the

Government arising from the interpretation and application of the LSA and the HSDA. Cabinet's attention was drawn to this matter on 15 February 2021 through a memorandum submitted by the Minister for Health and the Minister for Finance and Employment. Noted in the memorandum was that the MFH and the SHC had two long-standing points of contention. First was that related to the increase in annual fees corresponding to the healthcare budget increase, and second that concerning the verification of the number of Concessionaire and Government employees at the hospitals. Based on advice provided by the State Advocate, Cabinet was requested to authorise the drawing up of a settlement agreement intended to specify the payments of the amounts that the Government was to pay to meet the claims by the SHC, as well as the conditionalities underpinning the settlement. Provided that the SHC endorsed such an agreement, the Government was to pay a sum marginally in excess of €5,000,000 as settlement of the claim related to the healthcare budget increase under the HSDA, and a sum exceeding €20,000,000 as settlement of the claim related to the LSA. Cabinet approved this memorandum in its meeting of 15 February 2021.

9.3.86 A settlement contract was entered into on 19 February 2021. The SHC contended that this was a relatively minor matter in the context of the renegotiation of the concession; however, conceded that the settlement of the disputed claims imparted a sense of goodwill between the parties. Nevertheless, the SHC maintained that this matter remained unconnected to the negotiations undertaken to restructure the concession. A similar understanding of the relevance of the settlement of claims was put forward by the MFH, that indicated that the settlement was not intended to resolve the broader and more persistent issues that characterised the concession agreements. Although the MFH acknowledged that this settlement payment was not provided for in the concession agreements, the decision to settle was supported by clinical advice highlighting critical services that were under-resourced, together with clearance from MFIN and the State Advocate. The MFH understood that resolution of these claims would facilitate further negotiations between the parties on more critical matters in connection with the concession.

Of hopeless endings

9.3.87 Following the failure of negotiations in December 2020, efforts at resuming discussions were made in April 2021. This third round of negotiations extended till early June 2021. The interlocutors on behalf of the parties remained largely unchanged; however, included in discussions were INDIS Malta Ltd, in view of it being a signatory to the Emphyteutical Deed, and the BOV, given that the negotiation would affect the financing and security arrangements in place.

9.3.88 In this attempt at negotiation, the revised contractual framework envisaged the termination of the existing concession agreements and entry into a hospital management services agreement and a design and project management agreement, and the payment of compensation to the SHC for investments made through a termination and settlement agreement. The SHC explained that the point of departure of these discussions was the agreements drawn up in the preceding round of negotiations. However, a major difference that emerged in this round of negotiations was the role of the SHC in connection with the redevelopment of sites. In the revised arrangement, the

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SHC would no longer be responsible for construction, but retain the role of designer and project manager. Under such an arrangement, the construction contractor would be engaged directly by the Government.

9.3.89 While the SHC sought to conclude negotiations by end May 2021, the Minister for Health contended that this was not possible; however, proposed 8 June 2021 as the new date for signing. Although the new agreements were not signed on this date, the SHC understood that the Government intended to continue with negotiations, with end June 2021 set as the new target for finalisation and signing.

9.3.90 Other developments of note occurring concurrent with this period of negotiation related to the commissioning of a due diligence review on the SHC and another Eurostat EDP dialogue visit to Malta. The restructuring of the concession envisaged that the Government would reacquire assets held by the SHC. To this end, the MFH and MFIN commissioned a due diligence exercise to identify any links that existed between the assets and the SHC. The MFH indicated that the report did not proceed beyond draft format and therefore was not provided to the NAO; however, exchanges seen by this Office highlighted that the possible change in ownership of the SHC – from a UK-based company to a Spanish-based company – was known to the MFH as early as April 2021. Eurostat carried out another EDP dialogue visit to Malta between 31 May 2021 and 1 June 2021, with its Final Findings report issued on 27 January 2022. Noted in the 2021 Final Findings report was that the Government had attempted to renegotiate the concession and enter into another form of operational agreement with the SHC. According to Eurostat, the NSO anticipated that the Government would be taking over the project; however, the SHC would continue to manage the assets.

9.3.91 Despite attempts made by the parties at renegotiation, discussions did not resume after June 2021. According to the SHC, around August 2021, the Government informed the Concessionaire that it was unwilling to renegotiate the concession and therefore this was to remain in force for the time being. While the SHC maintained that it was unaware of why the Government aborted discussions, the Minister for Health informed the NAO that the concerns raised by the DoC and the State Advocate regarding compliance with the Public Procurement Regulations and the legality of changes proposed in terms of the contractual framework persisted.

9.3.92 How the parties sought to overcome the difficulties encountered in the second phase of negotiations in this third round of discussions remained unclear to the NAO. The crux of the impediments identified in the second phase related to the permissibility of the changes envisaged to the concession agreements, with the DoC and the State Advocate advising the Government that the proposed revisions altered the nature and scope of the concession and possibly breached public procurement regulations. Aside from a reduction in the role of the SHC – in that it would no longer be responsible for construction but retain design and project management functions – no other major revisions to that proposed in the second phase were put forward. This limited change rendered the concerns expressed previously by the DoC and the State Advocate as still applicable. While the SHC may contend that it was not privy to the reasons why the Government terminated the second round of negotiations, the Government was undoubtedly aware that the changes proposed did not address the concerns raised by the DoC and the State Advocate. It is in this context that the ambiguity of this round of negotiations persists.

9.3.93 In the period reviewed, the final reference to the concession in Cabinet records was made in a meeting held on 3 November 2021. According to the minutes of this meeting, the Minister for Health noted that the Government and the SHC did not want to continue to operate in terms of the existing contracts; however, acknowledged that, at this stage, a definite solution had not been identified and that all avenues were being explored. Notwithstanding this, the Minister for Health indicated that there were three alternative courses of action available to terminate the existing contractual ties. The SHC could decide to terminate the agreement, in which case no disbursement by the Government to the Concessionaire was due. Alternatively, the Government could instigate the termination of the concession agreement, which would imply that the Government would be obligated to pay damages to the SHC. Finally, agreement could be reached between the parties as to what payments were to be effected and how the contractual ties were to be dissolved. As a way forward, the Minister for Health stated that Cabinet ought to consider maintaining the existent contractual ties until alternative options were found; however, indicated that there ought to be no further negotiations on revisions to the concession. Cabinet endorsed this proposal.

9.3.94 The stance taken in the Cabinet meeting of 3 November 2021 was publicly disclosed during the plenary session of Parliament held on 18 May 2022. Updating Parliament on the status of discussions between the Government and the SHC, the Minister for Health stated that the Concessionaire was bound by the contractual framework originally entered into by the VGH. When acquiring the shareholding of the VGH, the SHC took over the contracts in their entirety. The Minister for Health maintained that no changes that altered the nature of the concession could be permitted, for the Public Procurement Regulations prohibited such amendments. Referring to the parliamentary sitting of 18 May 2022, the SHC noted that this was the first instance since its acquisition of the VGH shareholding that the Government declared that it was against the renegotiation of the concession. The SHC contended that this assertion contradicted prior commitments made by the Government and violated the SHC's foreseeable legitimate expectations.

9.3.95 After three and a half years, the Government and the SHC have nothing to show in terms of progress registered with respect to the renegotiation of the concession. The impasse that would derail the second and third rounds of negotiations, that is the fundamental changes to the nature and scope of the concession that were being sought, was such a basic principle underpinning the concession agreements and the Public Procurement Regulations that the NAO fails to comprehend how the parties ignored such limitations, more so when these had been flagged at intervals during the negotiation process.

9.3.96 Doubts persist as to the legitimacy of the Government's commitment to renegotiate the terms of the concession and whether the SHC had reasonable expectations that Government would do so. While the Government could renegotiate with the SHC, such renegotiation was to be within the confines established by the concession agreements and public procurement regulations – a consideration that should have been evident to the Government and the SHC. Nevertheless, in any process of negotiation, a commitment to negotiate does not necessarily imply that agreement will ultimately be reached. This process was no different in this respect. While key documents referred to by the SHC provided glimpses into this commitment, the information reviewed was insufficient for this Office to establish a comprehensive understanding of what this commitment entailed. Nevertheless, the Government's willingness to negotiate that which should have never been subject to negotiation may have imparted a sense of false hope to the SHC and lent credence to the Concessionaire's understanding of Government's commitment to negotiate. Lastly, the NAO contends that the setting of dates for finalisation, only to be postponed by the Government at the last minute – for verification of basic yet crucial facets of negotiation – reflected poorly on the Government's management of the process.

9.4 Implementation of the Services Concession Agreement by Steward Health Care

9.4.1 The Government and the VGH entered into the SCA on 30 November 2015. The scope of this Agreement was for the Government to grant the concession to the VGH, which comprised the right to develop, design, engineer, monitor, procure, finance, construct, equip, operate, maintain, embellish and manage the GGH, the KGRH and the SLH; and the obligation to render health care services in line with the SCA and the HSDA. Aside from these obligations the Concessionaire was to achieve several other objectives, which included the construction of a medical school, a university-level educational institution for nursing, a healthcare-related research and development facility and a health centre at the GGH. Any capacity not allocated to the Government could be used by the VGH for medical tourism. The conditions of the SCA became effective on 1 June 2016. Following a request by the VGH for the sale of its shareholding to the SHC on 27 December 2017, the Government consented to the sale. On 16 February 2018, the SHC acquired the shares of the VGH and as a result assumed control of the concession.

Change of control

9.4.2 Critical in regulating the change of control was Clause 15 of the SCA, which stipulated that "For 3 (three) years from the Completion Date the Concessionaire shall not suffer or allow to suffer the transfer, transmission, allotment, assignment or other dispersion sohowever called of its shares or the shares of its subsidiaries without the express prior written consent of GoM." Clause 15 seemed to indicate that the Government's consent would only be required in the three years following the completion date, that is, when the concession milestones were achieved. This date was set as 31 December 2018; however, was later made contingent on the issuance of planning permits. By April 2022, the completion date had not been realised. Notwithstanding this, the VGH sought the endorsement of Government prior to the transfer of control of the concession.

9.4.3 The NAO's understanding of the SCA was that it was silent on the regulation of change of control prior to the completion date and the years following three years from completion. While the latter period elicits less concern, for during this phase, the required capital investment would have already been made and the concession fully operational, the same cannot be said for the former period. In this Office's opinion, the period preceding the completion date represents the most critical period in the project, with the complexity of the concession, the coordination required among all stakeholders, the securing of financing and the sensitivity of services to be provided all contributing to this criticality.

9.4.4 The NAO's concerns regarding the ambiguity of Clause 15 were validated by the different interpretations of this Clause by the stakeholders involved, that is, the Prime Minister, the Minister for Health, the MFH, the PS MOT, the Chair Negotiation Committee, the VGH and the SHC. Despite these divergent perspectives, the NAO concedes that the interpretation of this Clause became a moot point once the VGH requested and the Government authorised the transfer of the shares, hence regularising the change of control.

9.4.5 Regardless, an element of concern persists, for a change of control during this critical juncture in the concession effectively remained unregulated. The NAO maintains that this lacuna exposed the Government to risk, for the silence of the SCA allowed the possibility of change of control of the concessionaire without Government's awareness or input. It remained unclear to this Office why the SCA only regulated change of control within a specific three-year period of the thirty-year term. While the NAO concedes that circumstances beyond the control of the Government may necessitate a change of the concessionaire, this Office contends that the SCA could have provided for clearer regulation on when this was permissible and under what conditions.

9.4.6 Given the contractual gap regulating change of control, the NAO sought to identify whether other legislative provisions applied. Adopting the period when the RfP was issued as the frame of reference, the NAO obtained limited guidance on the regulation of change of control, for the TFEU highlighted that permissibility remained contingent on the specific assessment of the case, the Directive 2014/23/EU had not been transposed to national legislation, and the then prevailing Public Procurement Regulations did not apply to public service concessions. On the other hand, when seen against a frame of reference grounded at the point when the change of control occurred, Directive 2014/23/EU provided an element of assurance as to the regularity of this change, while the local Concession Contracts Regulations since enacted remained inapplicable. Given the lacunae in legislation, regulation of change of control in this concession rested solely on the provisions cited in the SCA. Therefore, the NAO is of the opinion that the SCA ought to have more robustly governed the context allowing for change of control, the conditions under which such a change could be effected and how this was to be undertaken.

Structures of oversight

9.4.7 The NAO sought to obtain insight into whether the committees that were to oversee the SCA and the broader concession were established in line with the provisions stipulated in the Agreement. Key in this regard were the PMB, the HCC, the HMC and the MMB.

The Project Monitoring Board

9.4.8 The focus of the PMB was mainly related to the planning of the redevelopment, maintenance, management, and operation of the sites at the GGH, the KGRH and the SLH. In addition, the PMB oversaw progress registered in the designs, including aspects relating to timeframes and milestone achievements. The PMB was chaired by a representative of the Government and comprised three representatives of the SHC and one of the QMUL. The Board was occasionally assisted by other representatives.

9.4.9 Following the change of control from the VGH to the SHC, the PMB did not meet during the first year, with its first meeting convened on 8 February 2019. The MFH indicated that this lapse in convening the PMB was attributable to the more pressing matters that occupied the Ministry's attention at the time, referring to the several problems in the implementation of the agreements, which detracted the Ministry's attention from the project management function that ought to have been fulfilled through the Board. The SHC indicated that it was unaware of the reasons for the delay in reconvening the PMB and asserted that its representatives always attended when Government called such meetings.

9.4.10 When reconstituted in February 2019, attendance to the PMB was consistent by most of its members, except for the QMUL Malta representative, who only attended one meeting. Despite the SCA requirement for the PMB to convene at least every two weeks, the minutes provided to the NAO indicated that the Board only met ten times in 2019.

9.4.11 The SCA stipulated the reporting function that the PMB was to fulfil. To this end, specified in the SCA were the monthly, quarterly, and final reports that were to be compiled. The NAO established that no reports in the format specified in the SCA were drawn up by the PMB during the period reviewed. Reporting was to include information regarding the overall status of works undertaken, staff assessment, project summaries, challenges and key issues, risks identified and health and safety updates, tasks and next steps, decisions and consent required, key future dates and budgeted costs. While elements of these aspects were discussed by the PMB, the NAO's concern gravitated towards the fact that the Board failed to report in a regular and systematic manner, thereby rendering the management of the project unstructured and incoherent.

9.4.12 Notwithstanding this, the review of the minutes of meetings held by the PMB between February and November 2019 renders evident the work undertaken by the Board in respect of the concession. A major task overseen by the PMB was the review and discussion of plans for the GGH, the KGRH and the SLH, which included consideration of the redevelopment options for each site and the corresponding high-level budget, changes to the services and the number of beds provided, issues relating to the planning permitting process and the vacation of the parts of the sites occupied by third parties. Another major task undertaken by the PMB was the monitoring of concession milestone-related developments. This included oversight of the construction of the Barts Medical School, the Anatomy Centre and general progress registered at the sites, the refurbishment undertaken and the revision of the completion dates for the GGH, the KGRH and the SLH works.

9.4.13 The PMB did not reconvene after the meeting held on 20 November 2019, with the Board reconstituted in March 2022. This despite the requirement stipulated in the SCA for the PMB to meet on a fortnightly basis during the execution of works to be undertaken by the SHC on the sites. Notwithstanding this shortcoming, the NAO acknowledges that the utility of the PMB was rendered somewhat superfluous following the cessation of works resulting from the impasse between the Government and the SHC because of stalling negotiations. The MFH indicated that the change in Prime Minister and the subsequent change in negotiation strategy adopted, the effect of the pandemic, and the uncertainty brought about by successive attempts at renegotiating key elements of the concession, all bore impact in this respect. This rendered the relevance of the PMB and the other committees of oversight as secondary to the more fundamental and significant difficulties encountered in the implementation of the project.

The Health Construction Committee

9.4.14 The HCC was to be controlled by the Government and represent its interests during the phase of the concession when works were being carried out. The HCC failed to convene between February 2018 and February 2019, a matter explained by the MFH as attributable to the Ministry's focus on more critical matters in the implementation of the concession. During the PMB meeting of 8 February 2019, the Chair PMB suggested that for reasons of practicality, the HCC and the PMB were to merge until the achievement of the milestones. This arrangement remained in effect until 20 November 2019, the date on which the last meeting of the PMB – and therefore of the assimilated HCC – was held.

9.4.15 Between November 2019 and November 2021, the HCC, be it in the assimilated format with the PMB or autonomously, did not meet. The MFH attributed this lapse to several factors, similar to those cited with respect to the PMB, which rendered secondary the priority assigned by the Government to the HCC.

9.4.16 The HCC was constituted independent of any other related committee towards the end of 2021, with its first meeting held on 10 December 2021. The HCC was composed of three representatives of the Government. The MFH indicated that the Ministry was directed to strictly abide by the provisions stipulated in the SCA and therefore opted for the separate set up of the committees and boards.

9.4.17 In its first meeting, the HCC reviewed the construction projects undertaken to date in relation to the concession, noting that the Barts Medical School and the Anatomy Centre had been completed in 2019. However, following the completion of these elements, the HCC noted that minimal progress, if any, was registered in terms of the remaining construction contractual obligations. The HCC contended that although the masterplan for the building, redevelopment and restoration of the GGH and the KGRH/SLH sites had been drawn up, no tangible attempts to initiate works had been made by the SHC.

The Health Management Committee

9.4.18 While the HCC was assimilated into the PMB, this was not the case for the HMC, which Committee remained not constituted following the transfer of the concession to the SHC. The HMC was to be managed internally by the Government and was to serve as the SHC's point of contact for matters relating to the SCA. The NAO established that, despite the requirement set out in the SCA for the setting up of the HMC after the achievement of the first concession milestone (achieved in June 2016), the Government did not appoint this Committee following the change of control to the SHC.

9.4.19 The MFH confirmed that the HMC was not reconstituted and acknowledged that this created a lacuna in the contractual framework. It was in this context that the MFH sought to adopt a pragmatic approach to address the situation and elected to set up an internal ministerial committee, referred to as the PC. The functions of the PC overlapped those of the HMC in terms of the safeguarding of patient services. While conceding that the solution was not optimal, the MFH maintained that the PC assisted the Ministry in addressing serious operational issues that would otherwise have remained unresolved. In terms of its composition, the PC was composed of several representatives of the MFH. The PC was first convened on 6 July 2018 and met regularly up until end 2019, with its last meeting held on 22 November 2019.

9.4.20 During these meetings, the PC's role in guiding and formulating the Government's approach towards negotiations with the SHC was evident, identifying medical services and amenities that ought to be prioritised, the changes in services in connection with the medical tourism function, and the substitution of services deemed unnecessary with others considered more relevant to the communities that were to be served. Discussions regarding the allocation of beds, their designation for use and pricing considerations were regularly held. Also highlighted in several meetings of the PC were issues emerging from the implementation of the contractual framework or gaps therein, such as the arbitration in relation to disputed LSA payment claims, whether the cost of medical supplies was to be borne by the Government or the SHC, OPU-related payments and the monitoring of the SHC's performance in service delivery. Another fundamental element of the PC's oversight was its monitoring of the progress registered by the SHC in terms of the achievement of the concession milestones.

9.4.21 Other issues deemed of concern by the PC were the lack of visibility of the SHC's financial position, its failure to pay NI and VAT, the accrued liabilities of the Concessionaire and the possible misuse of public funds arising from transactions between the Concessionaire and Technoline Ltd. More generally, the PC sought to ascertain that public funds paid to the SHC were utilised in terms of the concession. A recurring issue subject to the PC's attention was the Concessionaire's failure to submit a performance guarantee, with the Committee's concern intensifying in instances when no such guarantee was in place and when that submitted was deemed not in line with requirements.

9.4.22 A matter deemed of primary importance by the PC and revisited in several meetings was the classification of the concession as an on-balance sheet entry, with the Committee identifying mitigatory measures intended at addressing the risks that resulted in such classification. The risks related to the lenders' liability being paid by the Government on the termination of the contract even if due to a Concessionaire event of default, the minimum revenue guarantee to the Concessionaire irrespective of use, the open-ended definition of force majeure, the Government's role in authorising the concession's financing and re-financing, changes in law leading to automatic early termination and Government step-in.

9.4.23 Towards the end of 2019, the PC's focus shifted onto the MoU that was entered into by the Government and the SHC. Several concerns were highlighted by the Committee in this respect. The PC expressed reservations regarding the financial implications of that agreed, which was to result in a considerable additional disbursement by the Government to the SHC. Linked to this was the requirement for the Government to establish a more appropriate legal vehicle through which such payments could be effected. Another concern brought to the fore by the PC was the uncertainty regarding which legal framework was to prevail in case of conflict between the MoU and the concession agreements. Furthermore, despite the MoU, concerns regarding the ambiguity of the concession agreements during the transition period persisted. Finally, and of note to the NAO was the frustration expressed by the MFH as to its lack of involvement in developments leading to entry to the MoU.

9.4.24 The NAO established that the PC did not convene after its meeting of 22 November 2019. The discontinuation of the PC coincided with a different approach to negotiations being adopted following the change in Prime Minister, whereby the OPM adopted a more central role in coordinating matters through the greater involvement of the MFH and MFIN.

9.4.25 Evident to the NAO was that the HMC was not constituted as specified in the SCA during the period reviewed. The matter was ultimately addressed in January 2022, when the Committee was convened. It is against this backdrop that the NAO's concerns regarding the management of this concession emerge. While this Office maintains that the PC fulfilled an important function, the utility of this Committee was short-lived. The PC's redundancy following the change in Prime Minister and the fact that the HMC or an equivalent of the PC was not set up resulted in a gap in the oversight of the concession in 2020 and 2021. In the NAO's opinion, the Government's inaction in appointing the HMC during this period was a failure in governance. While other management structures provided the Government with an element of assurance as to the performance of the SHC and the standard of health care services provided, these mainly related to the clinical elements of the concession. This Office's concerns emerge when one considers the concession from a broader context, which context was reflected in the mandate of the HMC; however, this remained unfulfilled as the HMC was not constituted.

The Maintenance Monitoring Board

9.4.26 The MMB was to be composed of representatives of the Government, the SHC and the QMUL, and was tasked with determining an annual preventive maintenance plan and ensuring that corrective action was taken by the Concessionaire whenever repairs were necessary. The MMB was not constituted during the period under review despite the requirement that this Board was to be set up as from the effective date, which date occurred on 1 June 2016. The failure to constitute the MMB, be it when the concession was under the control of the VGH, and later when under the control of the SHC, was deemed to be a shortcoming of note by the NAO. Although the SCA does not specify which party was to chair the MMB and therefore initiate proceedings for the convening of meetings, the same can be said of the PMB, the HCC and the HMC, meetings corresponding to which were held during various phases of the concession.

9.4.27 The MFH contended that certain maintenance obligations came into effect once the corresponding concession milestone was achieved, which assertion was deemed reasonable in that the obligation to maintain premises yet to be constructed only arises once the construction works are completed. Nevertheless, the NAO is of the understanding that the handover of the sites constituted a concession milestone in and of itself and ought to have triggered a shift in responsibility for maintenance of the existent facilities from the MFH to the Concessionaire. This Office is of the opinion that the delivery of a healthcare service of adequate standard rests on several aspects, one of which is that the premises and facilities utilised for the provision of such service are properly maintained. In this case, the NAO was not provided with assurance that the Government had the necessary visibility over the maintenance and upkeep of the sites. Responsibility for this shortcoming is mainly attributable to the Government, for the SCA provided a mechanism for oversight that was not exercised since June 2016 and it was ultimately in the Government's interest to ensure that the SHC maintained its hospitals to the required standard.

9.4.28 Having reviewed the structures of oversight as contemplated in the concession agreements and as implemented, the NAO noted several shortcomings in the setting up and functioning of these structures. Although this Office acknowledges that the focus of the Government and the SHC was on the ongoing negotiation of the concession, this did not eliminate the obligations borne by the parties to honour the requirements stipulated in the contractual framework, nor made redundant the several structures of oversight that ought to have been set up. These omissions and gaps ultimately detracted from the Government's ability to oversee the concession in a structured, coherent, and effective manner.

Planning considerations

9.4.29 To establish an understanding of progress registered by the SHC in terms of the planned works at the GGH, the KGRH and the SLH, the NAO reviewed the masterplans presented to the PMB and the planning applications submitted to the PA. This Office ascertained that, prior to the change in control of the concession in February 2018, four applications for planning permits had been submitted by the VGH. Three of these applications were approved by the time the SHC assumed responsibility for the concession. These comprised PA/05493/16, which related to the construction of a medical school at the GGH; PA/09895/17, submitted in connection with the demolition of part of the GGH and for the building of stores; and PA/03134/16, which entailed the restoration of the elevation of the main building within the SLH.

9.4.30 The NAO noted that the SHC was proposing new plans for the hospitals that differed considerably from those previously agreed to between the VGH and the Government. Seeking to clarify the reasons for these changes, the SHC referred to the advice sourced from real estate and facilities experts who, with the input of hospital teams and other stakeholders, considered the needs of the hospitals, patient-flows and other aspects of function, and drew up revised plans. This Office sought to ascertain whether the proposed designs were endorsed by the Government. In this regard, the MFH emphasised that the endorsement of the Ministry was not sought and therefore not provided. The MFH maintained that the SHC did not formally submit the proposed plans for sign off by the Government.

9.4.31 The first masterplan submitted to the PMB following the reconvening of the Board was dated 26 March 2019. The masterplan provided details of the development that was to be undertaken at the sites. Included in the masterplan was the strategic context of the development, a planning and delivery roadmap, a list of individuals to be included in the healthcare teams, a list of priorities to be addressed, a healthcare regeneration plan, details relating to the functional content, land use and opportunities available, together with a facilities condition assessment.

9.4.32 An update to the masterplan was presented to the PMB on 20 September 2019. The headlines comprised that the Barts Medical School handover was on schedule; the masterplan was complete; that support was secured from the PA; the acknowledgement of positive capital market interest; and that the development team was in place. According to the planning and delivery roadmap, the project had progressed to the design phase. The elements of development listed key functional considerations and a list of existing site observations and objectives for the GGH, the KGRH and the SLH. The masterplan included a development schedule of works that indicated that construction of the SLH was to commence in Q4 2020 and conclude by Q4 2022. Construction and refurbishment works at the GGH were to commence in Q4 2020 and conclude by end 2024.

9.4.33 On 17 October 2019, a development masterplan was submitted by the SHC to the PMB with respect to the SLH and the KGRH. Through this submission, the SHC proposed the expansion of patient bed capacity from 300 to 462 beds. Furthermore, several buildings within the site, including the KGRH, were earmarked for demolition and were to be replaced by the new rehabilitation hospital, a multi-storey car park and other construction the use of which was not specified. The revised masterplan envisaged construction at the SLH commencing in Q3 2020 and concluding by Q3 2022.

9.4.34 An update to the masterplan was provided by the SHC to the PMB on 20 November 2019. Included in the update was a development summary and schedule, a revised bed development plan for the KGRH, site rendering plans and details relating to the SLH physiotherapy department.

The GGH development program included site plans that indicated the planned demolition, the buildings marked for refurbishment, and the areas planned for development. The development plan for the SLH included details pertaining to the refurbishment works to be undertaken, the planned sites for demolition, the construction works to be carried out and road realignment. Of note was that the KGRH was scheduled for demolition; however, no details were included to indicate the reason for demolition or the planned use for the area once reconstructed, save for the indication that it was for 'future alternative use'. Included in the masterplan was an updated development schedule of works that indicated that construction of the SLH was to commence in Q3 2020 and conclude by Q2 2022. Construction and refurbishment works at the GGH were to commence in Q3 2020 and conclude by end 2024.

9.4.35 On 26 November 2019, feedback was provided by the SCH on the proposed rehabilitation, restoration and part redevelopment of the KGRH and the SLH as cited in the SHC masterplan. At a broad level of analysis, the SCH consented to elements of the development, objected to others and proposed modifications when possible.

9.4.36 Another report, titled PMB Clinical Review, was presented with respect to the GGH on 11 December 2019. The report included a masterplan development summary, a functional content summary, a clinical adjacency review and key departmental diagrams, including those of the emergency department, diagnostic imaging, theatres, inpatient new wards and refurbished wards.

9.4.37 On 20 December 2019, an outline development application for the masterplan for the rehabilitation and upgrading of the SLH for medical healthcare and ancillary facilities was submitted by the SHC. It was the intention of the SHC to demolish the KGRH in its entirety, all ancillary buildings connected to or related to the SLH main building and the other buildings facing the SLH. While new buildings were to replace those demolished, no specific use was identified for the buildings meant to replace the KGRH and the outpatients building. The only information in connection with the intended use of these buildings was 'future alternative use'. In addition, proposed in the application was the excavation and construction of an underground car park and the rehabilitation of the existing SLH main building and its environs. Feedback from several stakeholders was sought and received by May 2020. No further information or other consultation replies were submitted, and the application was noted as withdrawn by the applicant as at September 2022.

9.4.38 Revised plans for the GGH were submitted by the SHC to the PA on 19 February 2020. This submission related to an earlier masterplan submitted by the VGH to the PA on 14 November 2016, wherein feedback from the Authority was sought prior to the submission of a planning application. The masterplan included major alterations, demolition and the reconstruction of parts of the GGH to increase the number of beds from 270 to 450. Noted in the revised plans submitted by the SHC was that the proposed site for the Anatomy Centre was shifted adjacent to the Barts Medical School, while the childcare centre originally proposed by the VGH was eliminated. The SHC proposed the demolition of the building housing the Emergency Department, which was to be replaced by a new acute hospital to be erected on the site. In line with the proposal submitted by the VGH, the general hospital building and the St Theresa building were to be refurbished.

Furthermore, a new surface carpark was to be developed next to Barts Medical School. In view of these changes, a revised Project Description Statement was submitted to ERA on 20 February 2020, with the Authority issuing its comments in reaction thereto on 25 March 2020. No further submissions were made thereafter, with the application's status set as at 'screening process' at the time of reporting.

9.4.39 Also on 19 February 2020, a full development application was submitted by the SHC for the upgrading of the SLH. The application was for the demolition of several buildings within the SLH. Excavations were also being proposed for the construction of an underground parking facility. Also proposed was the rehabilitation of the existing SLH main building and its environs and the re-routing of internal roads. The consultation process with stakeholders was initiated following the submission of the plans and elevations for each building. However, progress on the applications appeared to have stalled as no further uploads were made. At the time of reporting, the application status was set as 'withdrawn by applicant'.

9.4.40 The SCH followed up on its engagement at pre-submission stage with further feedback submitted on 21 April 2020 regarding the outline planning application for the rehabilitation and upgrading of the SLH for medical healthcare and ancillary facilities. The SCH strongly urged that the architectural and historical value of the various parts of the complex be recognised and that significant buildings be preserved and integrated into the development. The demolition of the KGRH was deemed acceptable by the SCH as the building had no architectural or contextual value; however, recommended retaining the building's name owing to its historical association as a memorial. Regarding the original SLH building, the SCH deemed the interventions proposed by the SHC as acceptable in principle.

9.4.41 Another report was presented by the SHC to the PMB on 30 December 2020. The report presented a summary of the SLH's functional content and provided a breakdown of the inpatient, allied health and diagnostic and treatment sections within the SLH. This information was also provided for the GGH.

9.4.42 Notwithstanding the extensive effort expended by the SHC in devising plans for the sites, this effort did not translate into a tangible outcome. This situation is evidenced by the fact that a masterplan for the sites was not submitted for the approval of Government and the SHC's retraction or suspension of the planning applications made to the PA. Nevertheless, the impasse in the design phase of the concession was undoubtedly overshadowed by the broader stalemate in the negotiations underway between the Government and the SHC. The changing role that the SHC was expected to fulfil in the concession as a result of the ongoing negotiations rendered any further attempt at planning works to be undertaken as doubtful and futile.

Concession milestones

9.4.43 The concession milestones constituted the primary deliverables of the concession awarded by the Government to the VGH in respect of the capital investment sought. These milestones consisted of the realisation of the handover plan (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).

9.4.44 The deadline until when the concession milestones were to be achieved by the VGH were revised through the Addendum to the SCA dated 30 June 2017. The specific dates set for the achievement of the concession milestones were rendered contingent on the issuance of the relative licences and permits required by the Concessionaire. The Addendum extended the period for the completion of the construction works, which were to be carried out within four and a half years from the issuance of the planning permit. This was the contractual framework taken over by the SHC in February 2018.

9.4.45 The only concession milestone achieved by the VGH prior to the change of control of the concession was that relating to the handover plan. Assertions made by the Director VGH regarding the failure to register progress in terms of the other milestones drew the NAO's attention. The Director VGH maintained that the VGH was never in default of the concession agreements and was never given any verbal or written notice of non-performance or breach by the Government. While the assertion that the VGH was never in default is certainly a contentious statement, reasons for which are amply elaborated on in prior publications by this Office focusing on the role of the VGH during the period when the concession was its responsibility, that stated regarding no verbal or written notice of non-performance or breach having been issued by the Government is unfortunately true. This was not for want of effort on the part of the VGH to elicit such a warning but rather a reflection of the Government's weak stance in admonishing failure and enforcing obligations owed to it.

9.4.46 The next concession milestone that was to be achieved – now by the SHC – was the submission of the design plans to the Government. The referral of design plans to the PMB by the SHC and the submission of planning applications to the PA indicated that progress was registered with respect to this concession milestone. However, the Government and the SHC provided different perspectives as to why progress eventually stalled. The SHC contended that no formal feedback was received from the Government following the presentation of its plans to the PMB and the Minister for Health, while the MFH maintained that the plans drawn up by the SHC were not in accordance with the agreed standards and that submissions by the Concessionaire were indirectly affected by the challenges it continued to experience in sourcing financing.

9.4.47 Notionally, the approval by Government of the design plans and the authorisation by the PA of the relevant applications submitted by the SHC ought to have allowed for the commencement of works on the other concession milestones. Although these processes stalled and consequently prohibited any progress being registered with respect to the concession milestones, this was not the case for the Barts Medical School. The Government was prioritising the realisation of this concession milestone in light of its commitment to the QMUL, which resulted in the acceleration of works by the SHC leading to the completion of the Barts Medical School by October 2019.

9.4.48 The NAO established that none of the other concession milestones were achieved, with the obligation of the SHC to provide rehabilitation beds at the SLH, complete the new build at the GGH, renovate the other areas of the GGH and complete the medical tourism beds at the SLH not met. Although pockets of progress were registered, specifically, the provision of additional beds at the KGRH, the refurbishment of the Physiotherapy Department at the SLH and the construction of the Anatomy Centre, the GGH, the KGRH and the SLH remained in a generally dire state, with the investment envisaged for the upgrading, refurbishment or upkeep of the hospitals not made.

9.4.49 In sum, seven years after award of the concession, five of which were under the direct responsibility of the SHC, most of the concession milestones were not achieved. The improvement in health care services sought by the Government through the substantial investment envisaged when granting the concession has not materialised. The broader uncertainty that persisted in view of the protracted negotiations, the fact that the role that was to be fulfilled by the SHC remained in flux, and that the nature of the capital investment intended and its source remained subject to discussion contributed to the SHC's failure to achieve these milestones.

Securing financing

9.4.50 The SCA stipulated several conditions precedent that, when satisfied, were to trigger the effective date. The effective date occurred on 1 June 2016; however, certain conditions were not satisfied by this date. Instead, the Government provided the VGH with waivers, thereby allowing the SCA to come into effect. One of the conditions waived related to the Concessionaire's obligation to provide the Government with evidence that the primary lenders and financing agreements consented to by the Government were in place. During the period when the concession was under the control of the VGH, this condition was not satisfied but several waivers were granted by the Government.

9.4.51 After the change of control of the concession that occurred on 15 February 2018 and the expiry of the waiver granted by the Government to the VGH until 5 March 2018, no additional waiver in terms of the financing agreements was provided to the SHC until October 2018. Following a memorandum submitted to Cabinet by the Minister for Health on 15 October 2018, Cabinet resolved to grant the SHC with a waiver to this obligation until end 2018. Between 1 January 2019 and 20 January 2020, no waiver was provided by the Government to the SHC in relation to its obligation to submit evidence that the primary lenders and financing agreements were in place, notwithstanding that during this period of more than a year, the SHC failed to submit the required evidence. This gap came to an end, albeit temporarily, on 21 January 2020, when Cabinet approved the waiver of this obligation until end February 2020 following a memorandum submitted by the Minister for Health. However, the stance adopted changed after the Cabinet meeting of 25 February 2020, wherein it was decided that the Government would not be granting another waiver to the SHC regarding its obligations to provide evidence of financing. This situation persisted until end December 2021, that is, the period under review by the NAO.

9.4.52 Over the period reviewed, the SHC failed to provide the Government with evidence that the primary lenders and financing agreements were in place. This situation was at times regularised by the Government through the waivers granted to the SHC; however, these waivers were intermittent in their coverage, resulting in lengthy periods wherein this obligation of the SCA was neither met nor waived. This situation of default existed between March and October 2018, between January 2019 and January 2020, and between February 2020 and December 2021. Although the SCA regulated what was to happen if the conditions precedent were not met before realisation of the effective date, the Agreement was silent as to how the parties were to proceed in instances when the effective date was realised but the conditions precedent were neither achieved nor waived. This situation manifested once the Government discontinued the granting of waivers to the SHC in respect of the requirement to provide evidence of its financing agreements. The NAO is of the opinion that the uncertainty that arises out of this lacuna curtails the options open to Government to address this indeterminate state. While negotiations were underway, one hoped that this impasse would be overcome. However, with negotiations stalling and the Government now intent on the parties honouring the agreements as originally entered into, a prolongation of this stalemate is likely although unsustainable in the long-term. The planned capital investment will not be made without the financing required, while the taxpayer bears the burden of funding an investment in health services that has not been realised.

9.4.53 Although financing as contemplated in the SCA was not secured, the SHC entered into a series of agreements with the BOV whereby the Concessionaire obtained funds to which the Government acted as guarantor. On 8 May 2018, the First Sanction Letter was entered into whereby the BOV granted Steward Malta Management Ltd an overdraft facility of €5,000,000 to finance its working capital requirements in connection with the operation of the sites. This was shortly followed by entry into the Direct Agreement between the Government, Steward Malta Management Ltd, Steward Malta Assets Ltd, Steward Malta Ltd and the BOV on 22 June 2018. Through this Agreement the Bank was to be recognised as a ‘lender’ in terms of the SCA, and that the First Sanction Letter was to fall within the definition of ‘financing agreements’.

9.4.54 Subsequently, on 19 September 2018, a Second Facility Agreement was signed, whereby the BOV granted a loan facility of €3,000,000 in favour of Steward Malta Management Ltd. On 13 November 2018, the first Amendment and Restatement Agreement (Direct Agreement) was entered into by the Government, the SHC, and the BOV, through which the overdraft of €5,000,000 and the loan of €3,000,000 were to be recognised as part of the lenders’ debt as regulated by the SCA. This implied that the Government would assume responsibility for this debt in the event of any default. Also on 13 November 2018, Steward Malta Management Ltd, the BOV and the Government entered into the first Amendment and Restatement Agreement (Security by Title Transfer) through which the performance of the obligations of Steward Malta Management Ltd under the Second Facility Agreement was secured.

9.4.55 On 17 July 2019, the Third Facility Agreement was entered into, whereby the BOV granted a term loan facility of €22,250,000 in favour of Steward Malta Assets Ltd, and a term loan facility of €5,900,000 in favour of Steward Malta Management Ltd. On the same day, the Government, the SHC and the BOV entered into another Amendment and Restatement Agreement (Direct Agreement) to recognise the €28,150,000 in financing made available by the latter to the Concessionaire as part of the lenders' debt in terms of the SCA. The implication of this recognition was that the Government would assume responsibility to honour the repayment of the facility made available in case of default. Also on 17 July 2019, Steward Malta Management Ltd, the BOV and the Government, entered into the second Amendment and Restatement Agreement (Security by Title Transfer) which secured the performance of the obligations of Steward Malta Management Ltd under the Third Facility Agreement.

9.4.56 On 27 August 2019, the third Amendment and Restatement Agreement (Direct Agreement) was entered into between the Government, and Steward Malta Management Ltd, Steward Malta Assets Ltd, Steward Malta Ltd and the BOV, through which the definition of non-rectifiable government events of default was broadened. Entry into this Agreement was endorsed by Cabinet following a memorandum submitted by the Minister for Tourism a day prior. The implication of this broadening of what was to constitute a government non-rectifiable event of default was that, in the case of court-declared nullity of the concession agreement, the Government would be liable to pay the Concessionaire €100,000,000 and the sum of the lenders' debt incurred. The consequence of entry into this Agreement, be it in terms of the adverse effect it had on Government's ability to enforce the implementation of the concession and its leverage in negotiations with the SHC, was expounded on in the preceding paragraphs.

Performance guarantee

9.4.57 The Concessionaire was to provide to the Government an unconditional and irrevocable on demand prime bank performance guarantee of €9,000,000 in security for the due, proper and punctual performance of all its obligations under the SCA. Between 1 June 2018 and 15 October 2018, the SHC failed to provide the required performance guarantee and no waiver releasing the Concessionaire from this obligation was provided by the Government. On 15 October 2018, pursuant to a memorandum by the Minister for Health, Cabinet waived the obligation borne by the SHC to submit a performance guarantee until end 2018. From 1 January 2019 to 4 August 2019, the SHC did not provide the Government with the required guarantee nor was this requirement waived by Cabinet. An exemption was granted to the SHC on 5 August 2019, when Cabinet waived the SHC's obligation until 31 December 2019 following a proposal by the Minister for Tourism. This waiver was shortly followed by another exemption, this time sought by the Minister for Health on 21 January 2020, which resulted in Cabinet's approval to extend the waiver till end February 2020. On 25 February 2020, Cabinet decided that the SHC was not to be granted another waiver in relation to its obligation to submit a performance guarantee. Following the expiry of the last Government waiver, the SHC failed to submit a performance guarantee as required by the SCA. This situation of default persisted until the cut-off of the NAO's review.

9.4.58 Of concern to the NAO were the constraints highlighted by the Minister for Health, the MFH and the PS MOT regarding Government's possible action to rectify the SHC's failure to honour the obligation to submit a performance guarantee. Noting that the SHC was in default, the Minister for Health contended that the Government's consideration of this situation was conditioned by the liability it faced in the event of court-declared nullity, in which case the Government would be liable to pay the Concessionaire €100,000,000 and the sum of the lenders' debt incurred. The MFH conceded that the SHC's failure to submit a performance guarantee was not a non-rectifiable event of default and therefore the Ministry was limited in terms of possible action that could be taken. Although unaware of the specific reason for the gaps in waivers provided by the Government, the PS MOT indicated that this situation could, to an extent, be attributed to shortcomings in coordination between the MOT and the MFH at the political level and in terms of governance. Notwithstanding this, the PS MOT maintained that the waivers issued by the Government only made sense within a context of possible rectification, until agreement was reached, and that as the situation of stalemate persisted, the sense of granting successive waivers was lost. While the points made by the Minister for Health, the MFH and the PS MOT resonate with the understanding of the NAO, it is with concern that this Office notes that the limitations cited were in effect the result of agreements consented to by the Government, agreements that evidently failed to safeguard its interests or provide assurance through adequate mechanisms of redress.

Rectifiable and non-rectifiable concessionaire events of default

9.4.59 The SCA classified breaches by the concessionaire as either rectifiable or non-rectifiable concessionaire events of default. Events of non-observance of obligations by the concessionaire deemed as non-rectifiable comprised the fraudulent or wilful breach of licensed activity regulated by the SCA, abandonment of the concession, insolvency, liquidation, and winding up, be it on the concessionaire's initiative or court order. The NAO was informed by the MFH that no non-rectifiable concessionaire events of default were declared; however, the Ministry emphasised that negotiations with the SHC at the political level were ongoing throughout the period reviewed by this Office.

9.4.60 Aside from the non-rectifiable concessionaire events of default, any other breach of the concessionaire's obligations arising from any provision of the SCA was deemed a rectifiable concessionaire event of default. The NAO was not provided with documentation indicating that a rectification notice had been served to the SHC and therefore a rectifiable concessionaire event of default registered in the form specified in the SCA. The MFH argued that the Government opted to refrain from formally raising such events of default to create space for discussion on potential solutions to the problems that were being encountered. Notwithstanding this, the MFH informed the NAO of instances of breach by the SHC. Cited in this respect were issues concerning the financing of the concession, and shortcomings in the level and quality of service provided. Nevertheless, these instances of possible breach did not result in Government registering a rectifiable concessionaire event of default.

9.4.61 While the NAO concedes that the MFH's reluctance to register concessionaire events of default was intended to allow for negotiations between the Government and the SHC to succeed, as negotiations between the Government and the SHC dragged on and faltered, the scope for resolution of breaches to the SCA through discussion lessened. It remains to be seen whether the Government's approach towards the declaration of non-rectifiable and rectifiable concessionaire events of default changes now that negotiations with the SHC have stalled.

Other obligations

9.4.62 The SCA stipulated that the concessionaire was to provide insurance cover at its own expense. The NAO established that the SHC generally adhered to the requirements imposed regarding the provision of insurance cover. The main elements of the concession that required cover corresponded to the commercial aspect, encompassing medical professional, public and product liability, medical malpractice, employer liability, personal accident and industrial all risk. Notwithstanding this, certain policy documents and invoices corresponding to particular polices were not made available to this Office.

9.4.63 The SCA stipulated that a concession fee of €3,000,000 was to be paid by the Concessionaire over ten years. The SHC effected regular payments in this respect, paying €1,275,000 as at Q2 2022. Comprehensively, €1,825,000 of the €3,000,000 due to the Government were paid by the Concessionaires. No concerns arise in this respect.

9.4.64 Stipulated in the SCA was that the Concessionaire was to obtain and provide a parent company guarantee in the form set out in the Agreement. The parent company guarantee was intended to provide the Government with an element of assurance in that it guaranteed the performance of the Concessionaire's obligations under the SCA and indemnified the Government if the Concessionaire did not perform as agreed. When the concession was under the control of the VGH, a parent company guarantee was provided by Bluestone Special Situation 4 Ltd; however, when the SHC took over the concession in February 2018, the Concessionaire failed to provide the Government with the requisite guarantee. This failure to comply with the provisions of the SCA persisted until, at least, the end of the period under review, with the assurance sought by the Government in this respect remaining unaddressed.

9.4.65 Several of the conditions precedent stipulated in the SCA were fulfilled or waived when the concession was under the control of the VGH, as reported in Part 2 of the NAO's audit. Other conditions precedent, corresponding to the concession when under the control of the SHC, were addressed by the NAO in earlier parts of this section of the report. These related to the provision by the concessionaire of the required insurance policies, evidence that the primary lenders financing the concession were in place, the consent by the Government of the relevant financing agreements and the securing of a performance guarantee. The remaining condition precedent required the provision to Government of evidence that the EPC contractor had been engaged by the concessionaire. Queried in respect of the works undertaken on the Barts Medical School, the MFH indicated that its responsibility was limited to the health delivery aspect of the concession and that the capex element, including the construction of the School, did not fall within the Ministry's oversight and management. In the circumstances, it remained unclear to the NAO which entity of Government was responsible for ensuring that this condition precedent was realised.

9.4.66 Provided for in the SCA were several obligations that were to be warranted by the parties. Those borne by the SHC included that it was to duly file, register or record documents under any legal or statutory obligation, which default might have a material adverse effect on the fulfilment of the Concessionaire's obligations under the Transaction Agreements. Other warranties included the obligation to undertake the necessary checks to ensure the validity of its registration as a limited liability company; the preparation of audited consolidated financial statements; and that no revenue, capital or other economic or financial support would be required by the SHC from the Government throughout the concession period apart from the obligations already provided in the Transaction Agreements. On the other hand, the Government warranted that it had the power and authority to enter into the Transaction Agreements without contravening any applicable law. Of note to the NAO was the MFH's assertion that the Ministry was never in a position to identify any breaches of the warranties imposed on the SHC.

9.4.67 Also of concern was another instance when a gap in the responsibility for oversight was evident. This related to the obligation of the Concessionaire to design, equip, construct and operate a university-level nursing college within the site of the SLH. Of note to the NAO was that following queries raised, the MOT referred the matter to the MFH, while the MFH indicated that the Ministry was not involved in the setting up of the nursing college. This brought to the fore an area of weakness in the Government's coordination of the concession.

9.5 Implementation of the Health Services Delivery Agreement by Steward Health Care

9.5.1 The Government and the VGH entered into the HSDA on 30 November 2015. The HSDA regulated the healthcare and ancillary services that were to be purchased by the Government from the VGH for a period of 30 years. In February 2018, when the concession was transferred from the VGH to the SHC, the applicable frame of reference was still that prior to the completion date, that is, the transition period. During this period, the Concessionaire was bound by the service levels in place at the GGH and the KGRH as at the effective date, for which an annual payment of €51,000,000 was to be made by the Government. As from 2017 until the completion date of the project, the annual payment was subject to upward revisions in accordance with the Government's annual healthcare budget increase. Following the completion date, the minimum service delivery fee payable by the Government to the Concessionaire stood at an annual €72,856,500, revisable by the higher of two per cent or the Consumer Price Index on a yearly basis. This comprised the charge for beds made available, medical services, basic pharmaceuticals, medical supplies, inpatient and emergency care, rehabilitation, specialty consultation services, surgery, lease of the Barts Medical School and the air ambulatory service. Several addenda were subsequently entered into on 7 December 2015 and 30 June 2017, through which notable changes were made to the HSDA, resulting in an additional annual cost to Government of €10,402,500, the reduction of services to be provided by the Concessionaire without cost savings to Government, and the delay in the provision of additional beds.

The role of the Quality and Assurance Board

9.5.2 The first aspect of implementation reviewed by the NAO relating to the HSDA was that of service delivery and its monitoring in terms of quality and performance standards. Responsibility for this function was primarily vested in the QAB. Stipulated in the HSDA was that the QAB was to meet, at a minimum, on a monthly basis and was responsible for the oversight, direction and overall monitoring of the performance of the concessionaire in terms of the service levels to be provided, the Government's requirements for the services, and the KPIs as outlined in the Agreement.

9.5.3 Following the transfer of the concession from the VGH to the SHC in February 2018, the NAO established that efforts to reconvene the QAB were made by the Minister for Health in April 2018, with the Board's first meeting with the concession under the control of the SHC held on 23 April 2018. The NAO established that the QAB met on a fairly regular basis, with six meetings held in 2018, ten in 2019, two in 2020 and ten in 2021. The lull registered in 2020 was primarily attributable to the onset of the COVID-19 pandemic and the resultant more pressing priorities faced by the MFH and the SHC representatives on the QAB.

9.5.4 When the QAB reconvened in 2018, it was chaired by a representative of the Barts Medical School, while its other members were the Consultant MFH and several representatives of the SHC. Attendance to Board meetings was consistent by all members bar the Chair QAB. From 2020 onwards, the QAB was chaired by the President SHC Malta.

9.5.5 Several themes emerged in the NAO's analysis of the meetings held by the QAB. Immediately evident was the general organised approach towards governance adopted by the QAB. At the outset, the Board instigated a review of its charter that served to guide the QAB in terms of its role, duties, functions and procedures.

9.5.6 Key to the work of the QAB were the KPIs against which the SHC's performance was to be measured, as captured in the clinical performance reports for the GGH and the KGRH. The KPIs were revisited and fine-tuned several times by the Board and were a useful benchmark against which to gauge progress. Of concern to the NAO in this respect is that all of the work relating to the setting of the KPIs was undertaken with the SHC already in place, thereby prohibiting any meaningful comment as to whether progress was registered following the allocation of the running of the hospitals to the SHC as compared to when the same hospitals were managed directly by the Government.

9.5.7 The QAB was instrumental in the coordination of multiple facets of service. This was exemplified in efforts to introduce an integrated information management system for clinical patient records that interfaced with that run by the MDH, in the cohorting of patients to streamline services, provide the most appropriate care and improve efficiency, and in its contribution to the refinement of definitions of medical services provided.

9.5.8 Equally important was the role of the QAB in providing a useful platform for the SHC to bring to the fore the difficulties it encountered in managing the health service at the GGH and the KGRH. Common difficulties cited included resourcing constraints experienced in terms of the recruitment, retention and sharing of medical personnel, problems of coordination with the MDH, matters concerning the SHC's performance measurement, including the limited uptake of patient and staff satisfaction surveys, and training-related issues. In turn, the Government lobbied for expedience in the undertaking of works deemed pivotal to improvements in health services, drew attention to waiting lists and waiting times deemed excessive, insisted on the compilation of the major incident plan for Gozo and strived to improve the working relationship between the SHC and the MDH.

9.5.9 The pivotal role fulfilled by the Consultant MFH within the setting of the QAB is acknowledged by the NAO. The Consultant MFH highlighted aspects of services that warranted improvement or were of concern and others that merited praise for progress registered.

9.5.10 Discussion of matters relating to the COVID-19 pandemic assumed centre stage from mid-2020 onwards. Highlighted in this respect were instances of friction that emerged during the initial phase of coordination, or the lack thereof, between the SHC and the Government, operational measures instituted to optimise responses to the pandemic, actions taken to increase hospital capacity and the effect of the pandemic on performance as seen through the quarterly clinical reports regularly reviewed by the QAB. Noted in the Board meeting held in July 2020 was that the cost incurred by the Government in respect of the initiatives undertaken by the SHC to mitigate the effect of the COVID-19 pandemic exceeded €5,000,000. Also noted in the December 2021 QAB meeting was the commendation by the Consultant MFH of the work undertaken by the SHC in this respect.

9.5.11 The QAB fulfilled a pivotal role in respect of the Government's oversight of the level and quality of healthcare services provided by the SHC. Evident were the interventions intended to rectify instances of identified deficiencies, coordinate when necessary, facilitate the interfacing among stakeholders and its regular revisiting of issues that remained unaddressed or still in progress. In sum, the NAO is of the opinion that the QAB acted to the expected standard of governance, retaining appropriate records wherein decisions taken could be traced and accountability assured.

Monitoring through the Quality Performance Reports

9.5.12 Stipulated in the HSDA was that until the completion date, the Concessionaire was to, at all times, maintain the current level of beds and services at the GGH and the KGRH. Integral in ascertaining that these requirements were being met were the periodical reports drawn up by the hospitals capturing the diverse metrics against which service levels and quality were gauged. The NAO reviewed the quarterly reports submitted by the GGH and the KGRH for the period commencing Q1 2018 and ending Q4 2021.

9.5.13 In the GGH Quality Performance Report for Q1 2018, reference was made to the several indicators selected that were to enable the monitoring of performance and identification of potential areas for improvement. Noted was that these indicators were developed following consultation with a wide range of stakeholders and were categorised in two, that is, core KPIs and other KPIs. In its analysis, the NAO focused on the former, which comprised a set of 19 core KPIs identified by the GGH to gauge the three aspects of quality, namely clinical effectiveness, patient safety and experience. Acknowledged by the GGH were the limitations in the collection of data that bore an impact on the reliability and validity of the information sourced, and concerns relating to data analysis and the small numbers reported on.

9.5.14 Several indicators were established by the GGH to measure clinical effectiveness. Certain were generic in nature, such as hospital readmission rates and ALOS, while others were related to specific health services, such as joint replacement and stroke care. The overall trend that emerges when considering all readmissions to the GGH between 2018 and 2021 is one of decrease. Over this period, the NAO noted that the ALOS of patients with cardiac health and respiratory conditions decreased over time, while that of stroke patients increased. The performance indicators measuring the extent of activity undertaken by the GGH in connection with the delivery of newborns provided positive results, also evidenced in the significant decrease in ALOS for c-section deliveries. Nevertheless, the trend corresponding to the percentage of newborns born by c-section increased over the period reviewed. The multiple gaps in data limit the NAO from commenting further in this regard. When considering joint replacements by the GGH, mixed results were registered in the period 2018 to 2021. While the number of knee replacements and partial hip replacements declined, that of total hip replacements increased, albeit marginally. The final aspect of clinical effectiveness captured as part of the GGH's reporting on its performance was that related to stroke care, with an improvement registered in terms of the decrease in the duration for referral, contrasting with the reduction in the number of patients referred for rehabilitation.

9.5.15 Pertinent to note when considering the performance of the GGH in terms of clinical effectiveness was the decrease in hospital activity registered by the Hospital as from Q2 2020, following the onset of the COVID-19 pandemic, with the curtailment of most of the ancillary and diagnostic services, and the halting of all elective non-urgent procedures to free up acute care capacity and help keep transmission as low as possible. Demand was also suppressed as more patients were reluctant to go to hospital, a trend mirrored by the decrease in referrals. Several measures and mechanisms were introduced by the GGH to mitigate the effects of the pandemic, which resulted in the overall activity of the hospital returning to pre-pandemic levels in most services offered by end 2020.

9.5.16 Another dimension of performance measured by the GGH to gauge the quality of its service related to patient safety. The two key indicators established in this respect were infection control and harm-free care, and hospital incident and event reporting. Performance in terms of infection control was monitored through several sub-indicators which, over the period reviewed, registered a decrease in the number of reported instances. As regards the GGH's assessment of harm-free care, although the reports provided a positive outlook, the gaps in data precluded the NAO from understanding the level of performance. The GGH acknowledged that the reporting of incidents at the hospital was very low throughout 2018 yet maintained that this situation was partly addressed by Q3 2019 through the introduction of procedures for the registration, analysis and instigation of corrective action. Between Q2 2019 and Q4 2021, significant decreases were noted in relation to incidents and events concerning clinical management, investigation and documentation, and corporate management and security. On the other hand, an increase in the number of hospital incidents and events reported was noted in relation to matters concerning equipment and infrastructure, and physical harm and occupational health and safety.

9.5.17 The third dimension utilised by the GGH as an indicator of its quality of care focused on the patients' experience of services provided. The GGH sought to elicit information in this regard through two mechanisms, that is, by means of a system of complaints submitted by patients and a survey measuring patient satisfaction. Measurement of hospital complaints commenced in mid-2021 and therefore data available was limited and precluded the NAO from further comment. The patient satisfaction survey was introduced by the GGH in Q1 2019 and comprised ten key topics, namely, communication with nurses, communication with doctors, the responsiveness of hospital staff, communication about medicines, discharge information, food quality and choice, cleanliness of the hospital environment, quietness of the hospital environment, overall hospital rating, and willingness to recommend the hospital. Notwithstanding limitations in terms of poor response rates, the overall result of the patient satisfaction surveys undertaken by the GGH was positive across all key topics.

9.5.18 The KGRH drew up its first KPI report for the period Q1 2018. The intended aim of this report was to establish several KPIs, monitor the KGRH's performance over time and establish targets and models for improvement. In all, in its Q1 2018 report, the KGRH set 27 KPIs, with others introduced or further disaggregated in Q1 2019, resulting in a total of 43 KPIs. Generally, the KPIs related to the level of activity of the KGRH, the quality of the services provided and the outcome of care.

9.5.19 A key indicator of the level of activity registered by the KGRH was the number of patient days. Between 2018 and 2021, the total number of patient days fluctuated between 9,729 days in Q4 2020 and 23,990 in Q1 2018. Noted was the steep and sudden decline in patient days registered in Q2 2020, undoubtedly connected to the onset of the COVID-19 pandemic. While the number of patient days per quarter continued to rise throughout 2021 from the trough registered in Q4 2020, when compared to the levels consistently recorded between 2018 and 2019, the KGRH's activity in this sense remained limited. A similar trend was noted in terms of the KGRH's occupancy metric, which ranged between 39.3 per cent in Q4 2020 and 98.7 per cent in Q1 2018. Acknowledged by the KGRH was that, at a certain point, admissions came to a complete halt, in the main due to compliance with infection control guidelines and resulting from industrial action that was subsequently taken. Similar, albeit less pronounced, were declines noted in terms of admissions by the KGRH from the MDH and from the community.

9.5.20 Between 2018 and 2021, the KGRH-wide ALOS trended downwards overall. The highest hospital-wide ALOS stood at 84 days and was registered in Q1 2021, while the lowest stood at 44 days and was registered in the subsequent quarter. While the hospital-wide ALOS and that of geriatric patients decreased, that of rehabilitation and stroke patients trended upwards on average between 2018 and 2021.

9.5.21 Another important indicator for the quality of care received was the patient mortality rate. Between 2018 and 2021, the overall mortality rate trended downwards, declining substantially at the end of the period reviewed. The patient mortality rate during this period averaged 5.85 per cent in 2018, 6.65 per cent in 2019, 6.18 per cent in 2020 and 3.40 per cent in 2021. The KGRH KPI reports also provided information relating to the hospital's readmission rate, which indicator was another component and facet of the quality of care. The readmission rate to the KGRH trended upwards on average between 2018 and 2021 and ranged from 0 per cent in Q1 2020 and Q1 2022 to 9.5 per cent in Q4 2020, while the readmission rate to the MDH ranged from 2.4 per cent in Q2 2018 to 13.5 per cent in Q3 2020. Another element in the KPI reports that gauged the quality of care was the discharge outcome, categorised into four categories, namely home, the MDH, elderly homes and deceased. The number of KGRH patients discharged to return home and to be admitted to the MDH trended upwards between 2018 and 2021, while the number of KGRH patients discharged to elderly homes and those deceased trended downwards overall.

9.5.22 Two other indicators of quality of care measured in the KGRH KPI reports were the waiting times for patient transfer from the MDH to the KGRH and for non-urgent physiotherapy outpatient services. Between 2018 and 2021, the waiting time for patient transfer from the MDH to the KGRH was mostly stable and averaged 10.7 days, with a steep rise to 18 days in Q2 2020. The waiting time with respect to non-urgent physiotherapy outpatient services trended upwards overall during the period reviewed. Three other indicators measured by the KGRH KPI reports relating to waiting times were those with respect to orthotics, upper limb and lower limb prosthetics. All three indicators trended downwards between 2018 and 2021.

9.5.23 A major patient safety indicator reported on by the KGRH was the rate of hospital-acquired infections. The number of cases registered with respect to the several types of hospital-acquired infections monitored was below one per 1,000 patient days during the period reviewed. The only exception was with respect to the KP/ESBL hospital acquired infection, with peaks registered in Q3 2019, Q4 2020 and Q3 2021.

9.5.24 The KGRH KPI reports provided information relating to patient injuries while being cared for at the hospital. Measured in this respect were all pressure injuries, HAPI and HAPI excluding stage 1. In the period reviewed, improvements were registered in terms of these three measures of patient injuries, with a downward trend noted in each instance. A similar improvement, although less marked, was registered in terms of the incidence of patient falls recorded at the KGRH. This could be seen through three indicators, namely total falls rate per patient day, falls rate with injury per patient day and falls rate with severe injury per patient day. A trend of gradual reduction was noted in each instance.

9.5.25 An integral component of the KGRH's system of quality control was a patient satisfaction survey. The survey comprised several aspects of the patients' experience of the service provided, that is, the treatment received, the improvement in condition, respect to privacy, hospital cleanliness, staff politeness, hospital environment, food presentation, and food taste. The NAO combined the scores corresponding to all the aspects of the survey, with the resulting overall trend showing an improvement in terms of patient satisfaction. The reliability of this result could have been conditioned by the low response rate, which during the period reviewed, stood at 31 per cent.

9.5.26 Having reviewed the quarterly performance reports submitted by the SHC, the NAO is of the opinion that these provide the Government and the Concessionaire with key information as to the level and quality of service at the GGH and the KGRH. The subsequent refinement of key indicators reflected a commitment to capture information that provided valid insight into healthcare services rendered. However, the introduction of these metrics coincided with the assumption of control of the concession by the SHC, thereby prohibiting the comparison of the healthcare service provided by the Concessionaire – as captured in these reports – with that previously registered by the Government or the VGH. It is therefore not possible for this Office to ascertain whether the level of service was maintained by the SHC, for no control against which measurement can be made exists.

Gauging progress through the Key Performance Indicators

9.5.27 Other metrics established to gauge the performance of the concessionaire were a series of KPIs specified in the HSDA, which indicators represented a broader spectrum of measures against which progress was to be assessed. The KPIs set in the HSDA related to building and equipment, employee relations and labour management, and service delivery and quality of care and were to be implemented as from 2018.

9.5.28 The SHC maintained that the KPIs only became obligatory after the completion of the project. This was corroborated by the MFH, with the Ministry contending that the KPIs provided an overarching set of objectives that were to be achieved by the Concessionaire on completion of the milestones. Instead, other KPIs focusing on operational goals were formulated, as reported in relation to discussions held by the QAB and through the Quality Performance Reports. Notwithstanding the views of the MFH and the SHC, the NAO is of the opinion that these perspectives were incongruent with the provisions of the HSDA, which specified 2018 as the point of applicability of the KPIs.

9.5.29 To this end, the NAO assessed whether progress was registered in terms of the KPIs established in the HSDA. The first set of KPIs related to building and equipment. As regards to the availability of beds envisaged in the Agreement, those provided by the SHC fell significantly short of this requirement. In terms of the availability of medical equipment, while the MFH acknowledged that certain procurement was effected, the major expense items were not installed. Also noted by the MFH was that turnaround times for tests carried out improved as of mid-2018. The second set of KPIs concerned employee relations and labour management. Limited progress was registered with respect to the SHC's obligation to evaluate employee satisfaction, while more positive progress was made in terms of employee training, development and progression. A mixed record of progress was obtained regarding the availability of consultants and specialists. The final set of KPIs sought to ascertain the level of service delivery and quality of care. While aspects of progress were registered in connection with in-patient care and outpatient waiting lists, the comprehensive extent of reporting on all services outlined and committed to in the HSDA was not evidenced.

9.5.30 Although progress was registered with respect to all the KPIs, albeit to different extents, none of the indicators were completely achieved. This varying progress was reflected in that stated by the Minister for Health, who acknowledged an element of clinical improvement, and that maintained by the MFH, in its claim that the clinical output provided by the SHC remained of the same quality and quantity as that provided before the concession. Citing several examples of investments that ought not to be made for reasons of commercial viability and services that consequently ought not to be provided, the MFH conceded that certain aspects of the concession as contracted were not implementable.

9.5.31 While not directly linked to the KPIs, the SHC highlighted the improvements registered by the Concessionaire since it took over control of the concession from the VGH. The SHC referred to the layoff of several members of staff who had been engaged by the VGH and who had non-defined roles, such as head of liaison and head of hospitality. Instead, key hires for the core functions of a company were made, such as IT, HR and quality and patient safety. In essence, the SHC focused its efforts on ensuring that any resources that were not core to providing healthcare were removed and cited the rental by the VGH of several apartments for its management staff and a large villa for use as its head office as examples in this regard, which rentals were rescinded by the SHC. Another aspect that received significant attention following the change of control from the VGH to the SHC related to finances, with relevant filings since made.

Health service delivery at the Gozo General Hospital

9.5.32 The HSDA and its subsequent addenda stipulated the service levels and requirements that were to be provided by the Concessionaire at the GGH. In the period reviewed, when the concession was under the control of the SHC, mixed levels of progress were registered.

9.5.33 In terms of the number of beds at the GGH, the MFH acknowledged that while capacity increased when the concession was under the control of the SHC, it remained below that stipulated in the HSDA. As regards the improvement of the site, delays experienced in the finalisation of the masterplan resulted in the stalling of the setting up or refurbishment of facilities required for the provision of new or improved services. Two areas affected by this delay were the long-term geriatric care and the psychiatric ward. In addition, no major investment in medical imaging equipment was made. However, acknowledged was the improvement recorded in air ambulatory services through the procurement of a second helicopter. Progress was also registered in other ancillary areas of the GGH, including the upgrading of the hospital's mortuary and the pharmacy.

9.5.34 As regards health services, varying degrees of progress were noted by the MFH. Acknowledged was the progress registered in several aspects of service, with the specialisations of obstetrics and gynaecology, respiratory medicine, cardiology, dermatology, nephrology and endocrinology cited as examples. To a lesser extent, progress was also registered in other specialisations, with the Urology Department and the Department of Neurology identified as examples in this respect. Regarding outpatient activity, while the HSDA envisaged an increase of five per cent annually, the MFH indicated that a seven to eight per cent increase had been registered; however, no documentation substantiating this improvement was provided. Also identified by the MFH were certain services characterised by a stagnation in progress, with the Ministry highlighting emergency and elective surgery and the Emergency Department as cases in point. No progress was registered in connection with other services, with gastroenterology and endoscopy services specified as examples in this regard.

9.5.35 Providing context to the assessment of service delivery were elements that bore impact in the achievement or otherwise of the improvements sought. The MFH maintained that patient access to certain services was curtailed due to long waiting times, which situation did not improve when the concession was transferred to the SHC. The rheumatology service was cited as an example in this respect. At times, the lack of progress in the provision of new or improved services was attributed to problems associated with the engagement or retention of staff. Despite efforts to mitigate this situation by the MFH and the SHC, structural constraints persisted. In some cases, it was not possible to gauge progress due to the small number of cases seen by certain specialisations. The Intensive Care Unit was identified as a case in point.

Health service delivery at the Karin Grech Rehabilitation Hospital

9.5.36 In respect of the KGRH and the SLH, the HSDA stipulated that the Concessionaire was to provide 320 beds for inpatient geriatrics and 80 rehabilitation beds for patients requiring intensive rehabilitation. Little progress was registered by the SHC in this respect. Partly connected with this issue was the fact that the SHC contended that 250 rehabilitation beds were required at the KGRH, which proposal was being considered by the Government. Nonetheless, no agreement was reached between the parties on the revision of the number of rehabilitation beds during the period reviewed.

9.5.37 In terms of the improvements to the facilities, the MFH acknowledged the upgrading of the Physiotherapy Department, although no progress was registered in relation to efforts intended to extend the hours of service. Efforts to improve the OPU were also noted by the MFH, as were the works undertaken in connection with the pool area and the gym facilities. Nevertheless, other aspects of service, such as the pharmacy and the mortuary remained outstanding.

9.5.38 Of concern to the NAO were assertions made by the MFH regarding the SLH, which remained a derelict building that was not used for any clinical services other than physiotherapy and hydrotherapy, which facilities were refurbished by the SHC in response to Union pressure. The ancillary services envisaged were not provided. The MFH further contended that the Ministry had to step in to eliminate any danger that the deteriorating SLH building was posing. Commenting more broadly on the responsibilities assumed by Government in circumstances where the Concessionaire failed to deliver, the MFH lamented that Government ultimately remained responsible to provide public health services and was obligated to step in to ensure that patient health was safeguarded.

Payments by the Government to Steward Health Care

9.5.39 Under the SHC, the concession remained within the transition period, during which the Concessionaire bore an obligation to maintain the existing levels of service, consistent with those delivered by the Government prior to the award of the concession. Payments were to reflect this frame of reference.

9.5.40 The NAO established that the total amounts paid by the Government to the VGH and the SHC for the period June 2016 to December 2018 amounted to €87,306,261. Of this, €54,636,798 was paid to the VGH, while €32,669,463 was paid to the SHC.

9.5.41 In 2019, the amount payable by the Government to the SHC with respect to the GGH, the air ambulatory services and the KGRH was €72,909,068. The dues payable by the SHC to the Government in respect of leased resources, amounting to €33,928,180, were offset against the amount payable by the Government. This resulted in a net amount payable to the SHC of €38,980,888. Several adjustments – relating to settlement of the LSA, the OPU, GGH and KGRH salaries and the concession fee – resulted in the amount due by the Government to the SHC in 2019 increasing to €43,384,175.

9.5.42 With respect to 2020, the net amount due by the Government to the SHC totalled €39,529,524. Adjusting for expenses relating to COVID-19, additional orthopaedic and rehabilitation beds, the OPU, the Barts Medical School lease, KGRH salaries and the concession fee, the amount due by the Government to the SHC in 2020 was €49,329,245.

9.5.43 The charges due by the Government to the SHC in 2021 amounted to €50,449,488. During 2021, the settlement agreement in respect of the LSA and the HSDA was reached, with the parties agreeing that the Government was to pay the SHC €27,933,076. Adjusting for other revisions – namely, the fee paid for additional orthopaedic and rehabilitation beds, inflation, the OPU, the Barts Medical School lease, COVID-19-related expenditure and the concession fee – this resulted in an amount payable by the Government to the SHC of €87,548,722.

9.5.44 The €87,548,722 paid by the Government to the SHC in 2021 was inflated by the €27,933,076 arising out of the settlement agreement. Apportioning this extraordinary expenditure and other payments made based on when accrued resulted in amounts due by the Government to the SHC of €56,992,698 in 2019, €62,947,574 in 2020 and €61,025,200 in 2021. Evident is that, despite that the concession remained within the transition period, the amount due annually by the Government to the SHC increased substantially, from €56,992,698 to €62,947,574 between 2019 and 2021 – continuing the upward trend from €31,626,943 in 2017 and €39,128,584 in 2018.

Between 2016 and 2021, the Government paid the Concessionaire a total of €267,568,404, of which €52,687,218 were paid to the VGH and €214,881,187 to the SHC. It is pertinent to note that the €267,568,404 factors in the deduction of salaries of the resources that the Government made available to the Concessionaire. Salaries paid during this period accounted for a disbursement of €188,510,970. Therefore, the total cost incurred by the Government with respect to the GGH, the KGRH and the SLH between June 2016 till end 2021 was €456,079,372.

9.6 Implementation of the Labour Supply Agreement by Steward Health Care

9.6.1 On 8 January 2016, the Government and the VGH entered into the LSA. Through this Agreement, the Government agreed to supply the VGH with employees so that the Concessionaire could meet its obligations under the Transaction Agreements over the 30-year concession term. The Government was to supply the VGH with the staff indicated in a list of resources, which list had not yet been compiled at the point of entry into the LSA. Furthermore, the LSA stipulated that the Government was to promptly provide a replacement resource to address any shortfall in the number of resources supplied. The conditions of service of the employees supplied by the Government were to be those applicable to them as public officers and public servants. The VGH was to be charged by the Government the equivalent of any monthly basic salary, any applicable allowances and bonuses of every employee seconded by the Government, together with any tax and/or social security contribution due by the employer. In the event of an increase in the employees' salaries and any other benefits, the VGH would only bear increases of up to two per cent each year. The Government was to bear any additional charges. An Addendum to the LSA was entered into on 30 June 2017 through which the list of resources was set at 1,536 members of staff and the capping of charges payable by the VGH to the Government in respect of these resources set at €32,234,637. This Addendum was not authorised by Cabinet. This was the framework regulating labour supply that the SHC assumed when taking over control of the concession.

9.6.2 The NAO ascertained that the annual capped amount of €32,234,637 payable by the SHC for the 1,536 resources made available by the Government was offset against other payments due by the Government to the SHC throughout the period under review. Notwithstanding this, uncertainty and confusion persisted regarding the number and cost of resources made available, which arose from inaccurate information provided in the RfP that effectively capped the Concessionaire's labour costs and subsequently constrained the Government to assume adverse variances. This was aggravated following entry into the Addendum to the LSA, which set the €32,234,637 capping for the 1,536 resources that would prove to be underestimated in financial terms and inaccurate in headcount. This situation gave rise to several disputes between the Government and the SHC, some of which were still unresolved at the time of reporting.

9.6.3 Key to understanding the cause of the discrepancies in terms of the number of resources to be provided and the corresponding cost, was the report drawn up by RSM Malta, dated 16 September 2016. According to the report, were one to consider 1,536 resources as cited in the Addendum to the LSA, the projected costs of such resources at handover equated to an approximate

€42,000,000, as opposed to the €32,234,637 capped fee to be paid to the Government by the VGH. Therefore, the Government was effectively providing resources whose value far exceed that paid for by the VGH.

9.6.4 These discrepancies resulted in disputes being lodged by the SHC with respect to the settlement of invoices for costs it incurred for replacement resources. The first dispute lodged by the SHC concerned its request for reimbursement for replaced resources between 2016 and 2018. This dispute was settled in April 2019 when the Government paid the SHC €4,866,431. A second dispute was lodged by the SHC in 2020, whereby additional costs incurred in respect of the period 2016 to 2020 were claimed. Following the advice obtained from the State Advocate and authorisation provided by Cabinet, a Settlement Agreement was entered into in February 2021 between the Government and the SHC whereby the Concessionaire was paid €25,360,388 in relation to the second dispute, which included compensation payable in respect of the healthcare budget increase.

9.6.5 Applying the advice of the State Advocate post 2020, the MFH effected a payment of €2,572,688 in May 2021 in relation to the LSA adjustment corresponding to Q1 2021. The SHC submitted invoices to the MFH corresponding to Q2, Q3 and Q4 2021, totalling €6,648,552; however, these claims remained outstanding due to a dispute between the parties. The dispute arose as the MFH requested access to information required to verify the claimed amounts corresponding to the resources made available by the SHC. In turn, the SHC contested that the requested information was sensitive to privacy, national and European data protection law and contended that the Government had, until Q1 2021, accepted to settle claims through the reconciliation of the FS5 returns, implying that this information was sufficient for settlement purposes. Seeking guidance from the Data Protection Commissioner, the MFH was advised that the Ministry had sufficient grounds to process the requested personal data for the purpose of ensuring overall accountability in the disbursement of public funds and to guarantee financial responsibility, particularly in light of the national laws and regulations to which it was subject.

9.6.6 In conclusion, concerns expressed by the NAO in its assessment of the LSA entered into by the Government and the VGH, later taken over by the SHC, and reported on in part 2 of this audit, persist. In this Office's opinion, the balance of risks and value for money that Government ought to have secured through this concession was jeopardised on entry to the LSA and its Addendum, for the Government agreed to provide resources whose value far exceeded that to be reimbursed by the VGH and agreed on a system of revision of costs that was not fair and did not reflect the true increase of salary costs from year-to-year. This situation remained when control of the concession was assumed by the SHC, with the difference between the actual cost incurred by Government for resources provided to the Concessionaire and the reimbursements received in relation thereto more onerous each year.

9.7 Implementation of the Emphyteutical Deed by Steward Health Care

9.7.1 On 22 March 2016, the Government and the VGH (through VGH Assets Ltd) entered into the Emphyteutical Deed. The granting by emphyteusis of the sites at the GGH, the KGRH and the SLH to the VGH 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, refurbishment and upgrading of the GGH, and the refurbishment and upgrading of the KGRH and the SLH. The VGH could request to extend the emphyteutical grant of 30 years by a single and additional term of 69 years. Although control over renewal of the GGH and the KGRH sites rested with the Government, that for the SLH site rested with the VGH. Nonetheless, the right to extend the emphyteutical title over the SLH was tied to the obligation imposed on the VGH to use the site solely for medical purposes. The annual ground rent for the three sites was €525,000 and was revisable by 30 per cent on the commencement of the extended term and by five per cent every five years thereafter.

9.7.2 The Emphyteutical Deed allowed for the transfer of the temporary utile dominium of the sites by the VGH, provided that a written request for such authorisation was submitted to the Government. However, the Deed provided that a transfer to a group company of the grantee did not constitute a transfer and therefore authorisation from the grantor was not required. Notwithstanding this, a change in the person or persons controlling the grantee required the prior written consent of the grantor.

9.7.3 The NAO sought to establish whether the change in the shareholding of VGH Ltd – the parent company of VGH Assets Ltd – from Bluestone Investments Malta Ltd to SHC International Ltd was tantamount to a transfer of the sites to an unrelated third party, and consequently a change in the person or persons controlling the grantee, or whether this could be regarded as an intra-group transfer. Adopting a restricted interpretation, whereby control is understood as meaning the direct control in the grantee, the sale of the shares did not constitute a change of control since the grantee effectively remained the same. Therefore, this did not trigger the requirement for consent to be obtained, for VGH Assets Ltd remained directly controlled by VGH Ltd. However, this interpretation is tenuous at best for, de facto, Government's sanction was sought by the VGH on 27 December 2017 and granted on 3 January 2018, thereby implying that the transfer was not an intra-group transfer – which would not have necessitated any such request – but an outright change of control. This understanding was reflected in that stated by the MIP Ltd, in that the request satisfied the provisions of the Emphyteutical Deed relating to a change in control of the grantee and fulfilled the requirement for the grantee to secure the consent of the grantor. Further strengthening the understanding of the NAO – that the transfer in the shareholding of VGH Ltd was tantamount to a change in the person or persons controlling the grantee – was the fact that this transfer resulted in a change in the UBO of VGH Assets Ltd, from Bluestone Investments Malta Ltd to SHC International Ltd, and therefore did not qualify as an intra-group transfer, but as a transfer between third parties. No concerns emerge in this regard, for the VGH and the MIP Ltd adhered to the provisions of the Emphyteutical Deed regulating the transfer of the temporary utile dominium in circumstances tantamount to a change in the person or persons controlling the grantee.

9.7.4 Also stipulated in the Emphyteutical Deed was that, whenever a transfer occurred, unless it was an intra-group transfer, a laudemium was to be paid by the party assigned the emphyteusis to the grantor. The laudemium payment was to be equivalent to one year's ground rent of the immovable property, in this case amounting to €525,000. The laudemium was due to the Government immediately on the publication of the relative deed of transfer, and this under the pain of nullity of the said deed of transfer. The Government was to also appear on the deed of transfer for the purpose of recognising the assignee of the immovable property and to receive the laudemium due. In this respect, the NAO established that no deed of transfer was entered into and that no laudemium was paid by the SHC to the Government. As to the reason for the non-payment of a laudemium, INDIS Malta Ltd (previously MIP Ltd) maintained that despite the share transfer in the holding company in favour of the SHC, the emphyteuta remained the original grantee – albeit under a different name – and therefore obligations assumed by VGH Assets Ltd persisted. Nonetheless, the NAO contends that the position adopted by MIP Ltd in treating the transfer of the temporary utile dominium of the sites as an intra-group transfer – given that no laudemium was charged – as incongruent with its consent for the sale of the shares granted on 3 January 2018, since such consent was redundant in the case of an intra-group transfer.

9.7.5 On 12 May 2020, the entire share capital of the Maltese-registered SHC International Ltd was sold by SHC International Holdings Ltd to Cordiant Healthcare Services KSA SL, companies registered in the United Kingdom and Spain, respectively. The NAO sought to verify whether this sale and purchase of shares was brought to the attention of INDIS Malta Ltd in terms of the provisions stipulated in the Emphyteutical Deed regulating the transferability of the temporary utile dominium of the sites by the grantee, as was the case when control over VGH Assets Ltd shifted from Bluestone Investments Malta Ltd to SHC International Ltd. Despite requests by the NAO to INDIS Malta Ltd as to whether this matter was brought to its attention and what action was taken, no reply was forthcoming. INDIS Malta Ltd's failure to provide the NAO with the required information warrants censure for it constrained this Office's understanding of a key aspect of the concession, that is, ascertaining whether the Government was aware of who owned, albeit temporarily, the sites of three public hospitals.

9.7.6 While it remained unclear whether the change of control from the SHC International Holdings Ltd to Cordiant Healthcare Services KSA SL was referred to INDIS Malta Ltd, similarities between this and the transfer from Bluestone Investments Malta Ltd to SHC International Ltd were evident and therefore an apparent inconsistency in approach arises. While it may be contended whether the sale and purchase of shares was to be considered as a transaction between third parties or an intra-group transfer, the NAO subscribes to the former. Despite the lacuna in the Emphyteutical Deed as to what constituted 'control', this Office's understanding stems from the fact that the UBO of SHC International Ltd changed following the transfer of shares from SHC International Holdings Ltd to Cordiant Healthcare Services KSA SL. In this case, a laudemium could have been charged by the Government to Cordiant Healthcare Services KSA SL through a deed of transfer, which deed would have afforded the former with visibility over who held title, albeit temporarily, over public land. The NAO concedes that no specific consequence for a breach relating to the requirement to obtain consent was contemplated in the Emphyteutical Deed; however, it specified that failure to pay the laudemium would result in the nullity of the transfer. Moreover, such breach was not listed among the events of default permitting termination in the SCA.

9.7.7 One of the obligations of Government emanating from the Emphyteutical Deed was the granting of the vacant possession of the sites to the Concessionaire. The NAO established that several entities controlled by the Government continued to operate from the sites, including Malta Enterprise, the Blood Bank, the Child Development and Assessment Unit and the Detox Centre. An element of context to this situation was provided by the MFH, in that the Ministry contended that it made no sense for the Government to incur lease expenditure for new facilities for these health services since no works were undertaken at the SLH site.

9.7.8 The NAO enquired with INDIS Malta Ltd whether the SHC had made any other encumbrances on the sites other than the general hypothec made by the VGH in favour of Agribank plc; however, at the time of reporting, no reply was submitted. A loan facility of €1,000,000 was extended to the VGH by Agribank plc in 2017, which facility was secured by a first ranking special hypothec and a first general hypothec over the sites.

9.7.9 Stipulated in the Emphyteutical Deed was that ground rent payments were to be due and paid on 22 March of each year, one year in arrears. The NAO noted that invoices corresponding to the period 2018/2019 were issued in April 2019, therefore post the due date, consequently delaying payment. This shortcoming in the delay of issuing invoices was rectified in subsequent years. Notwithstanding this, the NAO observed that payments by the SHC were consistently made after the 22 March deadline. While the amounts due for the periods 2018/2019, 2019/2020 and 2020/2021 corresponding to the three sites were settled, that due for 2021/2022 remained pending. The balance due as at August 2022 was €619,500. The Deed provided limited recourse to the Government when ground rent payments fell in arrears, allowing for termination of the Deed if SHC owed the equivalent of three years of ground rent.

9.8 Steward Health Care's ownership and finances

Changes in the corporate structure behind the concession

9.8.1 Records retained by the MBR indicated that SHC International Ltd was incorporated in Malta on 1 November 2017. SHC International Ltd held 95 per cent of the shares of Steward Malta Ltd while the remaining five per cent were held by Dr Ashok Rattehalli. On 30 May 2018, SHC International Ltd acquired the five per cent shareholding owned by Dr Rattehalli in Steward Malta Ltd and therefore became the sole shareholder of Steward Malta Ltd. In turn, the shares of the Maltese-registered SHC International Ltd were held in their entirety by SHC International LLC, a company registered in the USA.

9.8.2 On 10 April 2019, the USA-registered SHC International LLC transferred its entire shareholding in the Maltese-registered SHC International Ltd to the UK-registered SHC International Holdings Ltd. The shareholding of SHC International Holdings Ltd was owned by SHC International LLC and therefore this change in shareholding introduced a UK jurisdiction to the corporate structure, while retaining the same US ownership. On 22 April 2020, the US-registered SHC International LLC transferred its entire shareholding held in the UK-registered SHC International Holdings Ltd to SHC Systems LLC, another US-registered company. Based on publicly available information, the NAO understood that it was at this juncture that the UBO of the Concessionaire changed, from Mr Stephen Feinberg to Dr Ralph de la Torre.

9.8.3 A notable development occurred on 15 June 2021, when the Registrar of Companies gave notice to SHC International Holdings Ltd that, unless cause was shown to the contrary, the company would be struck off the register and dissolved in not less than two months from the date of notice. Matters were temporarily resolved on 21 June 2021, when the striking off action was ceased as cause had been shown to discontinue such action. However, notice was again given on 7 December 2021. SHC International Holdings Ltd was further informed that on the company's dissolution, all property and rights vested in, or held in trust for, the company would be deemed bona vacantia, and would belong to the Crown. With the lapse of the statutory two-month period, the Registrar of Companies struck off SHC International Holdings Ltd on 15 February 2022 and dissolved the company on 22 February 2022.

9.8.4 The developments relating to the strike off and dissolution of SHC International Holdings Ltd in February 2022 were reported in the local media on 4 April 2022. This reporting triggered several enquiries by the NAO as to the significance of these developments on the concession under review, which in turn brought to Government's attention certain facts previously unknown to it and resulted in the SHC revisiting and rewriting old facts. The NAO sought to better understand the implications of the striking off and dissolution of SHC International Holdings Ltd, particularly in view of this company being the sole shareholder of the Maltese-registered SHC International Ltd, which in turn owned Steward Malta Ltd and its subsidiaries, that is, Steward Malta Assets Ltd, Steward Malta Management Ltd and Steward Malta Personnel Ltd, the companies responsible for the concession granted by the Government for the redevelopment and operation of the GGH, the KGRH and the SLH.

9.8.5 On 21 April 2022, the MBR was notified by the SHC that the UK-registered SHC International Holdings Ltd had transferred its shares in the Maltese-registered SHC International Ltd to the Spanish company Cordiant Healthcare Services KSA SL. Indicated was that 150,000 ordinary shares, having a nominal value of $0.10 per share, were transferred. The signatory to this form was Dr Armin Ernst, in the capacity of director of SHC International Ltd. The form bore the clearance of the CfR in terms of capital transfer duty, stamped on 19 April 2022. Of note to the NAO was that, according to the form, the transfer was effected on 12 May 2020, that is two years prior to the notification to the MBR and referral to the CfR.

9.8.6 The notification of share transfer submitted by the SHC raised several concerns to the MBR. The Registry contended that relevant duty could not have been paid in May 2020 if the CfR was notified in April 2022, that Dr Armin Ernst was not authorised to sign the form as he was not a director of SHC International Ltd on 12 May 2020, that the nominal share value cited was incorrect and that the UBO indicated in this share transfer notification contradicted information provided by the SHC in earlier submissions. Explanations provided by the SHC to the MBR were deemed tenuous, prompting the Registry to seek guidance from the State Advocate on the concerns arising from the two-year lapse in the submission of the notification of share transfer, the inconsistencies in ownership arising when one compared this notification with previous submissions, and the invalidity of the notification due to the signatory not being authorised. The State Advocate advised the MBR to act as it would with all other companies and not accept the form unless the mistakes were rectified in a manner deemed acceptable to the Registry. This guidance led to the SHC revising earlier declarations, returns and submissions made, now deemed erroneous in view of the share transfer notification submitted in April 2022. For its failure to issue share certificates and for failing to provide information about changes in its UBO, the SHC was fined €8,474 by the MBR.

9.8.7 Once the matter of dissolution of the UK-registered company was brought to the attention of the MFH by the NAO, the Ministry sought clarifications and information from the SHC. On 12 April 2022, the SHC indicated that the Maltese-registered SHC International Ltd was ultimately owned by the Spanish-based holding company SHC International SL (previously named Cordiant Healthcare Services KSA SL), that the UK-registered SHC International Holdings Ltd had been dormant for some time and was deregistered and that this information was already known to the MFH pursuant to prior filings and notifications. The NAO understood that stated by the SHC, that the MFH was aware of these facts, as reference to the due diligence exercise commissioned to Grant Thornton by the MFH and MFIN in early 2021. A more detailed submission was made by the SHC to the MFH on 18 April 2022, wherein information relating to the ownership structure of SHC International Ltd was disclosed. Santa Clara Holdings LLC (US-registered) was identified as the parent company of SHC International Investors LLC (US-registered), in turn the parent of SHC International SL (Spanish-registered) and in turn the parent of SHC International Ltd (Maltese-registered). Dr Ralph de la Torre was indicated as the UBO. Legal advice obtained by the MFH confirmed the inaccuracy of public records concerning ownership of the SHC; however, the advice highlighted that the validity of the share transfer agreement between SHC International Ltd and Cordiant Healthcare Services KSA SL did not depend on registration but became valid on signature. While the MFH's legal advisers conceded that the inconsistency in records reflected poorly from a governance and good standing perspective, they acknowledged that the scenario corresponding to the transfer of shares was not contemplated in the SCA and therefore the Government's consent was not required, and that failure to obtain consent in respect of the Emphyteutical Deed was not listed as an event of default permitting termination.

9.8.8 In view that the signatory to the concession agreements appearing on behalf of the Government was the Minister for Tourism, and that this responsibility arose from the assignment of Projects Malta Ltd (later the MSPP) to the MOT, the NAO directed queries to the PS MOT and the CEO

MSPP. The PS MOT noted that the change in ownership was a recent development and informed this Office that the MOT had long stopped being involved, kept informed or consulted on any matters pertaining to this concession. In turn, the CEO MSPP indicated that the MSPP was not aware of the dissolution of the SHC International Holdings Ltd and that it was not a party to any agreement entered with it or any of its subsidiary companies.

9.8.9 When one considers the change of control of the VGH from ownership by Bluestone Investments Malta Ltd to SHC International Ltd, the Government and the Concessionaire treated this as a change of control in terms of the SCA. The NAO has already expressed its concerns as to whether the SCA regulated changes in control prior to the completion date, with the Agreement conspicuously silent on an issue of fundamental importance to Government, at what could be considered a critical stage in the concession. In the case of the VGH-related change of control, the risk highlighted by this Office was mitigated by the fact that the Government was notified of the change, consented to it and therefore aware of the corporate structure behind its counterparty in the concession.

9.8.10 The risk highlighted by the NAO regarding Government's lack of visibility over the concessionaire emerged with the change of control registered by the SHC in April 2020, which change was not referred for the attention of Government. That the change of control over SHC International Holdings Ltd from SHC International LLC to SHC Systems LLC was implied in press coverage is coincidental and this Office's concerns regarding the inadequacy of the SCA in safeguarding the Government's interests persist, for no mechanism was provided for to ensure that the Government had visibility and a say in the authorisation or otherwise of who controlled three public hospitals.

9.8.11 In this case, the Government's visibility over ownership of the Concessionaire rested on records retained by the MBR, records that would prove to be an inaccurate depiction of the corporate structure and ownership of the SHC. The onus of updating such records rested solely on the SHC and therefore the failures in governance in this respect are attributable to it. Given the gravity of the situation and the period of default, the NAO deems the fine imposed by the MBR on the SHC as inadequate, more so when it was within the Registry's discretion to levy a heftier penalty for non-compliance.

The finances of Steward Health Care

Consolidated financial statements of Steward Malta Group

9.8.12 The Steward Malta Group comprised Steward Malta Ltd and its three subsidiary companies, namely Steward Malta Management Ltd, Steward Malta Assets Ltd and Steward Malta Personnel Ltd. In 2018, the group's total income amounted to €96,516,884, while its total expenses amounted to €102,879,998. Consequently, the group made a net loss of €6,363,114 for the financial year. In 2019, the group's income amounted to €101,308,228, while its total expenses amounted to €102,111,654. As a result, the group made a net loss of €803,426 for the financial year. In 2020, the group's total income amounted to €113,477,410, while its total expenses amounted to €107,423,825, thereby registering for the first time a profit of €6,053,585. The gross profit margin of the Steward Malta Group in 2018 was 6 per cent, increasing to 12 per cent in 2019 and 27 per cent in 2020.

9.8.13 The total assets of the Steward Malta Group increased over the three-year period reviewed. This was mostly due to a considerable increase in the contract asset from €26,448,935 in 2018, to €42,751,961 in 2019 and to €49,495,839 in 2020. During this period, the group posted a substantial increase in total liabilities, from €68,157,293 in 2018, to €100,401,030 in 2019 and €119,942,125 in 2020. The group registered a decreasing negative working capital, from -€62,996,475 in 2018 to-€31,948,241 in 2019 to-€24,913,526 in 2020. Furthermore, the group had a decreasing debt ratio over the period reviewed, from 1.98 in 2018, 1.52 in 2019, to 1.31 in 2020 and a debt-to-equity ratio of-2.02 in 2018,-2.91 in 2019 and-4.21 in 2020. Although an emphasis of matter drawing attention to a material uncertainty that could cast significant doubt on the Steward Malta Group's ability to continue as a going concern was indicated in the financial statements for 2018 and 2019, such emphasis of matter was not made in the 2020 statements.

Financial statements of Steward Malta Ltd

9.8.14 The main objective of VGH Ltd – later renamed Steward Malta Ltd – 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. On 16 February 2018, the shareholding of VGH Ltd was transferred, wherein Bluestone Investments Malta Ltd – its parent company – transferred 1,140 of its ordinary shares to SHC International Ltd. The remaining 60 shares were transferred to Dr Ashok Rattehalli. Although the authorised share capital of the company was increased to two hundred million ordinary shares of €1 each, the issued share capital remained €1,200. Dr Rattehalli transferred his shares in Steward Malta Ltd to SHC International Ltd on 30 May 2018.

9.8.15 With effect from 6 November 2020, the UBO of Steward Malta Ltd was Dr Ralph de la Torre. Records retained by the MBR corresponding to the period prior indicated that no natural person ultimately owned or controlled, whether through direct or indirect ownership or control, more than 25 per cent of the shares or voting rights in Steward Malta Ltd, or otherwise exercised control over the company through other means. However, the SHC informed the NAO that the UBO of Steward Malta Ltd prior to November 2020 was the ultimate controller of Cerberus Capital Management LP, understood by this Office as reference to Mr Stephen Feinberg.

9.8.16 The financial statements described the principal activities of Steward Malta Ltd as relating to the SCA entered into with the Government for the redevelopment, maintenance, management and operation of the sites at the GGH, the KGRH and the SLH. Steward Malta Ltd held three subsidiary companies, namely Steward Malta Management Ltd, Steward Malta Assets Ltd and Steward Malta Personnel Ltd. Between 2018 and 2020, Steward Malta Ltd incurred yearly losses amounting to €10,677, €9,080 and €9,165, respectively.

Financial statements of Steward Malta Assets Ltd

9.8.17 On 10 April 2018, VGH Assets Ltd changed its name to Steward Malta Assets Ltd. The principal aim of this company 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.

9.8.18 As regards ownership, as from 6 November 2020, the UBO of Steward Malta Assets Ltd was Dr Ralph de la Torre. Prior to this date, based on submissions to the MBR by the SHC, no natural person ultimately owned or controlled, whether through direct or indirect ownership or control, more than 25 per cent of the shares or voting rights in Steward Malta Assets Ltd, or otherwise exercised control over the company through other means. Additional information sourced by the NAO from the SHC regarding the UBO of the parent company of Steward Malta Assets Ltd, that is, Steward Malta Ltd, indicated otherwise.

9.8.19 Steward Malta Assets Ltd registered profits of €538,002 in 2018 and €333,899 in 2019; however, a notable loss of €7,317,941 was made in 2020, with the company's accumulating losses increasing to €7,797,012 up to year end 2020. The main revenue earned during the years under review was that from the services concession, which amounted to 96, 97 and 92 per cent of total revenue in 2018, 2019 and 2020, respectively. The gross profit ratio of Steward Malta Assets Ltd was 6.9 per cent in 2018, 8.2 per cent in 2019 and 21.8 per cent in 2020.

9.8.20 Between 2018 and 2020, the total assets of Steward Malta Assets Ltd increased from €31,302,331 to €61,325,856, corresponding to an increase of 96 per cent. However, this was mirrored by an increase in liabilities from €32,114,101 in 2018 to €49,863,705 in 2020. Steward Malta Assets Ltd had a consistent negative working capital in the years 2018 to 2020. The current ratio of Steward Malta Assets Ltd during this period was significantly less than 1, thereby serving as an indicator of insufficient current assets to cover the company's short-term debt. As regards the leverage financial ratios of Steward Malta Assets Ltd, its debt ratio for 2018, 2019 and 2020 stood at 1.02, 1.01 and 1.13, respectively. In terms of the debt-to-equity ratio of Steward Malta Assets Ltd, the company registered a negative ratio of-39.56,-107 and-8.87 in 2018, 2019 and 2020, respectively.

Financial statements of Steward Malta Management Ltd

9.8.21 VGH Management Ltd changed its name to Steward Malta Management Ltd on 10 April 2018. Its main objective, similar to that of Steward Malta Assets Ltd, 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. The authorised and issued share capital of the company was of 1,200 ordinary shares at €1 each.

9.8.22 The UBO of Steward Malta Management Ltd, as from 6 November 2020, was Dr Ralph de la Torre. Submissions made by the SHC to the MBR corresponding to the period prior indicated that no natural person ultimately owned or controlled, whether through direct or indirect ownership or control, more than 25 per cent of the shares or voting rights in Steward Malta Management Ltd, or otherwise exercised control over the company through other means. As highlighted in the preceding paragraphs, information sourced by the NAO from the SHC regarding the UBO of the parent company of Steward Malta Management Ltd, that is, Steward Malta Ltd, indicated otherwise.

9.8.23 The NAO reviewed the audited financial statements of Steward Malta Management Ltd for the years 2018 to 2020. During 2018, the company's turnover amounted to €81,882,712, while its total expenses amounted to €88,768,315. Consequently, Steward Malta Management Ltd registered a net loss of €6,885,603 for financial year 2018. Throughout 2019, Steward Malta Management Ltd's turnover amounted to €85,005,202 while the total expenses incurred were €86,123,316. As a result, the company made a net loss of €1,118,1140 in 2019 before charging tax. During 2020, the company's turnover amounted to €106,732,132, while its total expenses amounted to €93,339,651. Therefore, Steward Malta Management Ltd registered a profit of €13,392,481 for the year 2020. The gross profit margin of Steward Malta Management Ltd between 2018 and 2020 increased from 6 per cent, to 13 per cent to 27 per cent, respectively.

9.8.24 The value of total assets recorded by Steward Malta Management Ltd between 2018 and 2020 increased from €28,340,472 to €64,332,054. Over the period reviewed, the accumulated losses decreased from €32,898,222 to €20,623,855. On the other hand, the company's total liabilities increased from €61,434,148 in 2018 to €87,064,675 in 2020. Steward Malta Management Ltd registered improvements in working capital during the period 2018 to 2020. The current ratio for Steward Malta Management Ltd during 2018 and 2019 was less than 1, thereby indicating insufficient short-term assets to cover the company's short-term debt; however, the situation improved in 2020, when a ratio of 1.41 was recorded. In terms of the debt ratio of Steward Malta Management Ltd, this stood at 2.15 for 2018, 1.94 for 2019 and 1.31 for 2020, a decline that was deemed a positive development for the company. As regards its debt-to-equity ratio, Steward Malta Management Ltd registered a ratio of -1.87, -2.07 and -4.22 in 2018, 2019 and 2020, respectively. Of note to the NAO was that the independent auditor's report for 2018 and 2019 indicated a material uncertainty related to going concern, despite that the shareholder had given its undertaking to support the company. No emphasis of matter was made by the auditor in the 2020 financial statements of Steward Malta Management Ltd.

Financial statements of Steward Malta Personnel Ltd

9.8.25 VGH Resources Ltd was registered on 24 July 2017 and was renamed Steward Malta Personnel Ltd on 18 May 2018, a subsidiary of Steward Malta Ltd. Steward Malta Personnel Ltd had an authorised and issued share capital of €1,200 divided into 1,200 shares of €1 each. As was the case with the other subsidiaries of Steward Malta Ltd, the main object of Steward Malta Personnel Ltd was to acquire and hold, buy and/or sell and otherwise deal in shares, membership interests, stocks, bonds, debentures or securities of or in any other company or body of persons whether in Malta or anywhere else.

9.8.26 Again, the UBO of Steward Malta Personnel Ltd was, as from 6 November 2020, Dr Ralph de la Torre. According to records filed with the MBR by the SHC, in the period prior, no natural person ultimately owned or controlled, whether through direct or indirect ownership or control, more than 25 per cent of the shares or voting rights in Steward Malta Personnel Ltd, or otherwise exercised control over the company through other means.

9.8.27 In the period under review by the NAO, Steward Malta Personnel Ltd incurred yearly losses, which resulted in total accumulated losses of €16,137 in 2019. Included in the notes to the financial statements was that the average number of persons employed by the company during 2018 was 98 and increased to 135 in 2019. Financial statements for year ended 31 December 2020 were not available as at June 2022. The total assets of Steward Malta Personnel Ltd decreased by 48 per cent over the period reviewed, from €2,397,285 in 2018 to €1,241,719 in 2019. The NAO also noted a significant decline in current liabilities, decreasing from €2,402,121 in 2018 to €1,256,686 in 2019. The substantial decline of the current liabilities over the period reviewed coincided with a decline in the current assets. Steward Malta Personnel Ltd experienced a steady current ratio of approximately 1 during the period reviewed, which implied that the company could pay off all its current liabilities with its current assets.

Consolidated financial statements of Steward Health Care International Ltd

9.8.28 SHC International Ltd was registered with the Registry of Companies on 1 November 2017. It was originally completely owned by SHC International LLC, registered in the USA, but transferred to SHC International Holdings Ltd, registered in the UK, on 10 April 2019. SHC International Ltd had an authorised and issued ordinary share capital of €1,500 divided into 150,000 shares at €0.01 each. The main objective of the company was to provide health care and related services as well as the provision of services for the maintenance and operation of hospitals and other care sites anywhere in the world.

9.8.29 As from 6 November 2020, the UBO of SHC International Ltd was Dr Ralph de la Torre. As regards the period prior, based on records submitted to the MBR by the SHC, no natural person ultimately owned or controlled, whether through direct or indirect ownership or control, more than 25 per cent of the shares or voting rights in SHC International Ltd, or otherwise exercised control over the company through other means.

9.8.30 Noted in the consolidated financial statements was that SHC International Ltd owned two subsidiary companies, namely Steward Malta Ltd and MTrace plc. While the principal activity of Steward Malta Ltd related to the concession, that of MTrace plc was that of operating a radio-pharmaceutical and isotopes production centre and laboratory.

9.8.31 During the period 1 November 2017 to 31 December 2018, SHC International Ltd made a net loss amounting to $44,319, failing to generate any revenue during this period. Meanwhile, the group's revenue amounted to $110,310,541 and its gross profit was $6,343,275, resulting in a gross profit margin of 5.8 per cent. The total expenses for the period stood at $119,703,948, of which $15,511,816 were administrative expenses. Consequently, the group registered a net loss of $9,192,116 in the financial period November 2017 to December 2018. Cited as an emphasis of matter, according to the financial statements, as at 31 December 2018, the group's total liabilities exceeded its total assets by $10,757,380. This, along with the fact that during the period ending 31 December 2018, the group made a loss attributable to the shareholders of $8,785,663, indicated the existence of a material uncertainty that could cast significant doubt about the group's ability to continue as a going concern.

9.8.32 In 2019, SHC International Ltd made a net loss of $7,899, not generating any revenue during the year. On the other hand, throughout 2019, the group's revenue amounted to $113,470,707 and its gross profit was $13,534,867, resulting in a gross profit margin of 11.9 per cent. In this period, the group's total expenses stood at $114,687,081, with administrative expenses accounting for $12,529,439. Consequently, the group made a net loss of $516,974 in 2019. Noted in the financial statements as an emphasis of matter was that, as at 31 December 2019, the group's total liabilities exceeded its total assets by $9,706,732. This, along with the fact that during the same period the group made a loss attributable to the shareholders of $889,043, again indicated the existence of a material uncertainty that could cast significant doubt about the group's ability to continue as a going concern.

9.8.33 SHC International Ltd had a current ratio considerably lower than the 1.5 to 3 benchmark, standing at 0.07 and 0.24 for 2018 and 2019, respectively. As regards the leverage financial ratios of SHC International Ltd, its debt ratio for 2018 and 2019 stood at 1.14 and 1.09, respectively. In terms of the company's debt-to-equity ratio, it registered a ratio of -8.14 in 2018 and -12.34 in 2019. Financial statements for year ended 31 December 2020 were not filed with the MBR as at June 2022 and hence could not be reviewed as part of this audit.

Other related companies

9.8.34 MTrace plc was registered as a public limited liability company in Malta on 30 November 2015. On 13 August 2018, 237,500 fully paid-up shares of €1 each were transferred from Vitals Procurement Ltd to SHC International Ltd. Subsequently, on 28 January 2021, share ownership was transferred from SHC International Ltd to Malta Enterprise.

9.8.35 During 2018, 2019 and 2020, MTrace plc did not earn any revenue; however, in 2019, the company registered €320,850 as other income. The most significant expense incurred over these years were administrative expenses, which stood at €664,376 in 2018, €191,456 in 2019 and €63,302 in 2020. MTrace plc also incurred finance costs of €72,140, €149,238 and €113,049 between 2018 and 2020. This resulted in losses of €736,516 in 2018, €19,844 in 2019 and €176,351 in 2020.

9.8.36 Between 2018 and 2020, the assets of MTrace plc stood at €7,960,739, €7,924,189 and €7,538,397, while its liabilities amounted to €8,682,256, €8,665,550 and €8,456,109, respectively. MTrace plc had a consistent negative working capital in 2018, 2019 and 2020. The current ratio of MTrace plc during this period was significantly less than 1, thereby serving as an indicator of insufficient current assets to cover the company's short-term debt. As regards the leverage financial ratios of

MTrace plc, its debt ratio for 2018 and 2019 stood at 1.09 and that for 2020 was 1.12. In terms of its debt-to-equity ratio, the company registered a negative ratio of-12.03,-11.69 and-9.21 in 2018, 2019 and 2020 respectively.

9.8.37 SHC International (Malta) Ltd was registered on 25 January 2021 and was owned by SHC International Ltd in its entirety. SHC International (Malta) Ltd had an authorised and issued ordinary share capital of €1,200 divided into 1,200 shares at €1 each. The main activity and business of this company was to provide health care and related services and give services for the maintenance and operation of hospitals and other care sites anywhere in the world. The UBO of SHC International (Malta) Ltd was Dr Ralph de la Torre. No financial statements of the company were available at the time of reporting.

Payment of tax and National Insurance

9.8.38 As at 2 March 2022, the SHC had effected €3,405,583 in VAT payments, yet had an outstanding balance (including estimations due to missing returns) of €33,883,414. A balance of €516,356 was also due by the SHC to the Government in terms of tax on emoluments, National Insurance and additional tax.

9.9 Malta Enterprise's systematic failure to cooperate

9.9.1 Malta Enterprise had a central role in coordinating certain requirements of the concession, particularly in relation to the Barts Medical School. Moreover, Malta Enterprise, appearing on behalf of the Government, was the signatory to the lease agreement entered into with the QMUL in relation to the School. This aspect was of interest to the NAO since the Government was liable to pay the SHC €1,200,000 per annum in respect of the Barts Medical School, increased by two per cent annually, which cost was to be recovered by the Government through its lease agreement with the QMUL.

9.9.2 Despite queries submitted by the NAO, Malta Enterprise failed to respond to any of the requests made. In the only correspondence received by the NAO, albeit related to Part 2 of this report, the CEO Malta Enterprise claimed that 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. It is unclear to the NAO whether this argument guided the stance adopted by Malta Enterprise in this audit, as correspondence submitted by this Office was not acknowledged. Given the stance adopted by Malta Enterprise, the NAO was unable to ascertain whether the Government recovered the disbursement incurred in lease payments made to the SHC through charges levied on the QMUL. This Office is of the opinion that ordinary commercial transactions, such as the payment of rent by the QMUL, does not constitute sensitive data and should be subject to scrutiny by Parliament and accountability to taxpayers.

9.10 Overall conclusion

9.10.1 The concession for the redevelopment, maintenance, management and operation of the sites at the GGH, the KGRH and the SLH was awarded by the Government to the VGH in September 2015, with control assumed by the SHC in February 2018. During the period reviewed, the concession remained in a transition phase, wherein the SHC bore an obligation to retain the level of service existent prior to the concession and to undertake the capital investment that was agreed to.

9.10.2 The initial interactions between the SHC and the Government immediately drew the NAO's concerns for the conflicting accounts and the lack of records regarding these crucial exchanges obscured visibility. The limited disclosures by the Prime Minister, the curt replies by the Chief of Staff OPM, the failure of the Minister for Tourism to attend any request made by the NAO, the omission of the Minister for Health from any meaningful involvement on the fate of this public health-related concession, the allegations of duress levelled by the Director VGH, and the anomalous role played by the CEO VGH, later appointed the CEO SHC International, corroborate this Office's understanding that this concession remained one distant from the standards of accountability and transparency expected of Government.

9.10.3 The reason for the limited timeframe within which the SHC was spurred on to act by the Government and its willingness to do so were also matters that remained obscure to the NAO. The false sense of urgency heightens this Office's concerns about whether Government's interests were duly served and prompts a keen focus on the conduct of those involved in the change of control of the concession. Such was the haste of those representing Government, that Cabinet was only requested to endorse the transfer of the concession after authorisation had already been granted by the Minister for Tourism and MIP Ltd to the VGH.

9.10.4 Unfortunate parallels may be drawn between the incoherent approach adopted by the Government in its original grant of the concession to the VGH and its subsequent consent for the transfer of the same concession to the SHC. In its award of the concession to the VGH, the incoherence was seen in the failure by the Government to appropriately plan for the concession, its failure to involve the MFH and to maintain balance in the transaction through the several side agreements entered into by the Minister for Tourism following award. At the point of change of control to the SHC, this incoherence is evidenced in the fact that Cabinet's approval was sought after the Minister for Tourism granted authorisation, that the CEO SHC sought the clearance of the Chief of Staff OPM to communicate with the Minister for Health on what was a health concession, and the absence of the MFH from key stages in the process.

9.10.5 With control of the concession secured by the SHC, its objective for negotiations was that of rendering the concession bankable, while the Government's focus was essentially on addressing the concession's on-balance sheet classification. These negotiations ultimately proved to no avail, for the objectives of the Government and the SHC remained diametrically opposed and the resulting differences were irreconcilable from the outset. The NAO had no visibility over most parts of the negotiation process, with glimpses caught through the review of key documents and the recollections of those involved and willing to disclose. Nevertheless, it was evident that, overall, the process of negotiation between the SHC and the Government lacked structure and direction.

9.10.6 The unorthodox dynamic that persisted between the Prime Minister and the Minister for Tourism, to the detriment of the Minister for Health's ability to negotiate with the SHC, remained a matter of grave concern to the NAO. The delegation of responsibility for a health concession to the Minister for Tourism was deemed illogical by the NAO and provided a convenient opportunity for the exploitation of Government, creating weakness where there ought to have been none, a weakness all to readily leveraged by the SHC. The most evident exploitation was that secured by the SHC in terms of Government's liability to pay €100,000,000 and the sum of the lenders' debt to the Concessionaire in case of court-declared nullity of the concession agreements, irrespective of the party attributed the default, a situation precipitated by the Minister for Tourism and engineered through his misleading of Cabinet. Compounding matters was that Cabinet's authorisation was not sought by the Minister for Tourism in instances when Government acted as guarantor in several financing agreements entered into by the SHC and the BOV.

9.10.7 While the first attempt at renegotiating the concession stalled due to the political upheaval that persisted in late 2019 and early 2020, resulting in the resignation of the Prime Minister and the Minister for Tourism and an overall change in approach towards negotiations, subsequent attempts failed because that which the Government and the SHC sought to renegotiate proved not permissible in terms of the concession agreements and relevant legislation, for the parties now sought to fundamentally alter the nature of the concession. That the renegotiated contractual frameworks constituted a fundamental departure from the nature of the concession as contracted ought to have been evident to both parties. Earlier recourse to the DoC and the State Advocate would have avoided futile time and effort being expended by the parties. Certainty on the parameters of negotiation ought to have been established at the outset. The NAO is of the opinion that the belated verification by the Government as to the legality of the proposed restructuring of the concession was an avoidable omission.

9.10.8 The core agreement regulating the concession was the SCA; however, the NAO noted several gaps in the contractual terms and obligations that remained unfulfilled. The change of control of the concession from the VGH to the SHC highlighted a key contractual gap of the SCA, which was silent on the regulation of such changes prior to the completion date, the period that the concession remains in to date. While regularity of the change of control from the VGH to the SHC was rendered moot in view of the authorisation sought and given, the subsequent change in control over the SHC was undertaken without any input of Government.

9.10.9 Government's visibility over the concession was insufficient, for it failed to constitute the HMC and the MMB, which were committees of oversight contemplated in the SCA. Although deficiencies were also noted by this Office in terms of the regularity of meetings held and the fulfilment of requirements by the PMB and the HCC, two other committees of oversight, the NAO is cognisant that the relevance of these committees was rendered secondary to the more fundamental and significant difficulties encountered in the implementation of the project, which difficulties were not attributable to the committees but resulted in their redundant functioning.

9.10.10 The effort of the SHC in devising plans for the sites did not translate into a tangible outcome, for the design phase of the concession was hindered by the broader stalemate in the negotiations between the Government and the SHC. Aside from the completion of the Barts Medical School and pockets of progress registered in other respects, all other concession milestones were not achieved while the concession was under the control of the SHC. The Government and the SHC's inability to agree on crucial elements hindered the implementation of the concession and the envisaged improvement in health care services. Again, the SCA was silent on the Concessionaire's failure to provide evidence of having sourced financing, with the impasse between the Government and the SHC ultimately detrimental to the taxpayer.

9.10.11 The SCA provided a mechanism for the address of specific instances of default. One such case of default was the SHC's failure to submit a performance guarantee. In this and in other breaches, the MFH was reluctant to register concessionaire events of default to allow for negotiations to proceed; however, with the stalling of progress between the parties, it remains to be seen whether the Government will enforce the contractual mechanisms of redress at its disposal.

9.10.12 The HSDA regulated the service delivery element of the concession. The corresponding monitoring function in terms of quality and performance standards was aptly fulfilled by the QAB, which met on a regular basis, was organised in its approach, diligently established benchmarks of performance and highlighted challenges encountered in service delivery, coordinating when so required to facilitate the work of multiple stakeholders. Fundamental to the work of the QAB were the quarterly performance reports submitted by the SHC for the GGH and the KGRH which, despite limitations in the sourcing of data, captured essential information regarding the level and quality of service, thereby providing the Government and the SHC with insight thereon. Notwithstanding this, it was not possible for the NAO to establish whether progress was registered following the concession of these hospitals, for the introduction of these metrics coincided with the SHC assuming responsibility and therefore no comparators are available.

9.10.13 Other metrics established to gauge the performance of the concessionaire were a series of KPIs specified in the HSDA, which indicators corresponded to building and equipment, employee relations and labour management, and service delivery and quality of care. While the MFH and the SHC contended that these KPIs became obligatory after the completion of the project, the NAO maintained otherwise, for the HSDA specified 2018 as the point of applicability.

9.10.14 Regardless, mixed levels of progress were registered across the diverse array of services provided at the GGH and the KGRH. However, the SHC's failure to effect the capital investment as contracted stunted the advancement of health services provided and in the case of the SLH resulted in the dereliction of these facilities. This against a backdrop of payments by the Government increasing substantially year-on-year. Over the period 2016 to 2021, the Government paid the

Concessionaire €267,568,404, with €52,687,218 paid to the VGH and €214,881,187 to the SHC. Salaries of resources made available to the Concessionaire by the Government during this period accounted for a further disbursement of €188,510,970. Therefore, the total cost incurred by the Government with respect to the GGH, the KGRH and the SLH between June 2016 and end 2021 was €456,079,372.

9.10.15 In the NAO's opinion, the value for money that Government sought to realise and the fair allocation of risk between it and the Concessionaire was fundamentally undermined on entry to the LSA and its Addendum. Through these Agreements, the Government provided the VGH with 1,536 resources, which bore a value far more than the reimbursement secured, €32,234,637. Aggravating matters was that the Government committed to a mechanism of revision of costs that was not just and that did not capture the real annual increase in salaries. This situation persisted when the SHC took over the concession, with each passing year aggravating the discrepancy between the real cost to Government of resources made available to the Concessionaire and the amounts recovered in relation thereto.

9.10.16 As regards the Emphyteutical Deed, the circumstances relating to the transfer of control over the concession, arising in each case from a change in the UBO of the Concessionaire, drew the attention of the NAO. In the first instance, when control shifted from the VGH to the SHC, the authorisation of MIP Ltd for the transfer of the shares was sought, consistent with the understanding that the UBO – and therefore ownership of the Concessionaire – had in fact changed. In this context, this Office deemed the treatment of the transfer as an intra-group transfer by the MIP Ltd, when it decided not to charge a laudemium, as incongruent with the fact that the UBO had changed and therefore the payment of a laudemium to the Government was warranted. However, this charge was not raised by the Government. In the second instance, when control of the concession shifted from SHC International LLC to SHC Systems LLC, INDIS Malta Ltd – previously MIP Ltd – was not notified of the transfer, despite that the UBO of the SHC had changed. The NAO contends that this too did not qualify as an intra-group transfer and therefore a laudemium could be charged by the Government. Despite these shortcomings, the Emphyteutical Deed did not specify any consequence for failure to obtain consent for the transfer of the sites yet indicated that the non-payment of a laudemium would result in the nullity of the transfer.

9.10.17 In turn, the SCA did not consider the Concessionaire's failure to notify the Government of a change in ownership as a breach constituting grounds for termination, thereby bringing to the fore the fact that no mechanism was provided for to ensure that the Government had visibility and a say in the authorisation or otherwise of who controlled three public hospitals. This, and other deficiencies cited, highlight the flawed contractual framework that the Government consented to and must now be regulated by.

Appendix A | Correspondence submitted by the Union Ħaddiema 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 ghall-Kontijiet Pubblici
Il-Parlament,
Valletta - Malta

Onor. Fenech,

F'isem il-**Union Haddiema Maghqudin - Voice of the Workers** (UHM) u l-**Medical Association of Malta** (MAM), qed inressaq l-odjerna talba sabiex il-Kumitat Parlamentari ghall-Kontijiet Pubblici, li tieghu inti Chairperson, jinvestiga l-kuntratti hekk maghrufa tat-tlett sptarijiet mal-Vitals Global Healthcare Malta (VGH).

L-interess ewlieni taz-zewg trade unions huwa dak tal-membri taghha, haddiema tal-Isptarijiet pubblici relattivi. Il-Gvern qed jesigi illi l-Unions taghna jaghlqu l-ftehim – izda l-Unions qed ihossu illi mhux fl-interess tal-membri taghhom 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 taghhom illi jaghlqu l-ftehim meta mhux car x'inhuma l-konsegwenzi legali, prattici, fattwali, industrijali u reali fuq il-haddiema, konsegwenza tal-ftehim iffirmat bejn il-Gvern u l-Vitals Global Healthcare Malta.

Il-Unions ghamlu hafna mistoqsijiet li baqghu mhux mwiegba. Il-Unions talbu ghal 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 ghalhekk, illi qabel ma l-Unions jhossuhom komdi dwar l-effetti reali tal-kuntratt msemmi fuq il-haddiema u l-kundizzjonijiet taghhom, huma mhux ser jersqu biex jiffirmaw. Huwa ghalhekk ukoll, li l-Unions qed jaghmlu minn kollox kif ikollhom l-informazzjoni kollha, inkluz ghalhekk billi ressqu t-talba odjerna.

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SPITERI BAILEY ADVOCATES

Fatti Rizultanti sal-llum

Reċentament, il-Gvern ħabbar li kien se jgħaddi tliet sptarijiet f'idejn operatur privat, anzi aktarx illi llum gja ghaddha l-istess spartijiet.

Sal-ġurnata tal-lum ġew ippubblikaṭi 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-sejħa 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 taghhom, 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-investiment mwieghed ta' €200 miljun, waqt li ż-żewġ terzi l-oħra kienu ser jinstabu minn kredituri finanzjarji oħrajn;

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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* uffiċjali tagħha;

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-preżentatur 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 uffiċjal jew parti mill-*management* ta' *Allianz* qatt ma għamel xi referenza għal dan ir-rigward;

Illi anzi, jirrizulta minn pubblikazzjonijiet ta' gurnalisti lokali (Daphne Caruana Galizia blog) illi minn *side letter* ippubblikatat 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 jħallas għas-servizz, (b) il-ħaddiema ma kienux se jonqsu, (c) li s-somma li kien se jħallas il-Gvern kienet se tkun daqs kemm qed tiswa lill-Gvern bħalissa u (d) li l-pagi kienu se jitħallsu 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'bini 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'għandomx 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-ftehim kollettiv preżenti ma' l-Universita'.

Bart's dejjem iddikjara li ma għandhom xejn x'jaqsmu ma' *Vitals*, ħlief li kien se jkollhom membru wieħed 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

Wieħed 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 wieħed aħseb u ara tliet sptarijiet sħaħ. Jidher li l-kumpanija *Vitals Global Healthcare* m'għandhiex flus, jew nies, jew esperjenza biex tagħmel dan.

Wieħed, għalhekk, ma jiskantax li l-kumpanija wkoll insiet tapplika għal-liċenzji neċessarji biex wieħed imexxi dawn l-isptarijiet u di fatti, in segwitu ghal Protest Giudizzjajru li tressaq xi gimghat ilu miz-zewg Unions esponenti, kien irrizulta illi l-licenzji kien ghad ma ghandhomx.

Filwaqt li l-Gvern, meta l-Onor. Konrad Mizzi kien ufficjalment il-Ministru responsabbli ghas-Sahha, 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.

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SPITERI BAILEY ADVOCATES

Ftehim mal-Unions

Illi fis-settur tas-Sahha Pubblika, huma erbgha l-Unions li jirrapprezentaw id-diversi setturi 'ta' haddiema. B'zieda mal-Unions esponenti, jizdiedu l-GWU u l-MUMN.

Gie mhabbar illi l-MUMN u l-GWU iffirmaw il-ftehim taghhom. Jinghad illi gie assikurat illi l-membri tagħhom jibqgħu ħaddiema tal-Gvern ta' Malta anke jekk ser jaqgħu taħt l-hekk imsejjaħ *management* ġdid. Dan minkejja illi mill-partijiet tal-kuntratt pubblikati – din ma tirrizultax.

Min-naħa tagħhom, il-UĦM *Voice of the Workers* u l-*Medical Association of Malta* (MAM), il-unions esponenti, minħabba dubji serji, qed jinsistu li qabel ma jieħdu dan il-pass u jorbtu lill-membri taghhom bi ftehim, għandhom l-ewwel jiġu pubblikati l-kuntratti **kollha**, isir *due diligence exercise* mill-Awditur Ġenerali fuq il-kwistjonijiet u d-dubji kollha u issa issir l-investigazzjoni mill-*Public Accounts Committee* tal-Parlament Malti. Huwa b'hekk illi kwalsiasi dubbji forsi jigu kkjarifikati.

"Forsi", peress illi jibqghu dubbji zgur dwar tant avvenimenti ohra illi mhux b'kumbinazzjoni jiccirkondaw 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 Gobal Healthcare* gie negozjat minn żewġ persuni msemmija fil-*Panama Papers* li fl-istess zmien ta' dawn in-negozjati, fethu kumpaniji sigrieti, u kkuntattjaw mhux inqas minn disa' banek biex fihom ikunu jistgħu jitfgħu 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-iżjed affarijiet inkwetanti għall-ħaddiema u għall-unions

Kif wiehed jista' japprezza minn numru ta' premessi hawn fuq maghmula, il-Unions esponenti ghandhom numru ta' *issues* illi qed jinkwetawhom u li qabel ma jserrhu rashom dwarhom, mhux qed ihossuhom komdi jersqu biex jiffirmaw ftehim mal-Gvern. Fost dawn :

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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 ħaġa, 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 possibbilta' ta' qligħ illegali, fl-agħar każ minn kriminalita' organizzata, jew inkella politiċi korrotti, jew indħil ta' gvernijet jew servizzi sigrieti ta' ċertu pajjiżi b'interess li jikkontrollaw servizz essenzjali. Il-Unions esponenti ihossu illi dawn id-dubbji kollha ghandhom jigu eliminati.

4. Minn fejn ġejjin il-flus ghal dan l-investiment? L-istabilita' tal-operatur hija mportanti ghall-Unions sabiex jassikuraw l-impjiegi u l-kundizzjonijiet tax-xoghol tal-membri taghhom.

5. X'inhi r-raġuni ghaliex qed tinheba l-identita' 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-investiment mingħajr ma l-Gvern joħroġ ewro iżjed? Il-Unions jidhrilhom illi jew inghatat informazzjoni ħażina, jew inkella mhux investiment serju.

7. X'inhi 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-sahha ghall-poplu Malti. B'dawn id-dubbji kollha, kif jistghu 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 ghall-poplu Malti u Ghawdxi?

9. Kif ser ikun assikurat illi l-haddiema membri tal-Unions esponenti ser ikollhom l-ghoddha, l-materjal u l-*equipment* kollu necessarju sabiex jadhmu, u illi tali makkinarju ikun mantnut b'mod adegwat?

SB

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 priorita ghall-pazjenti barranin (*medical tourists*)?

Is-sens ta' responsabbilita' tal-Unions jiddetta illi ma jaghlqux ftehim sakemm ma jkunux jafu l-parametri kollha importanti u necessarji f'liema il-membri taghhom ser ikunu qed jahdmu u joperaw fis-snin li gejjin. Huwa insult illi l-Gvern jippretendi illi l-Unions jintrabtu ghal numru ta' snin meta l-fatti kollha ghadhom mhux maghrufa. Aktar u aktar meta hemm tant habi, dubbji u misteri wara l-ftehim tal-Gvern mal-*Vitals Global Healthcare Malta*.

<u>Konklużjoni</u>

Għaldaqstant il-***UĦM 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 maghmula 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 rranġata 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 jixraqlu, iżda biex kumpanija li m'għandhiex assi u li mhix maghrufa, tkun tista' tuża l-bini li ngħatalha għal tletin sena, fl-isfond ta' dubbji dwar il-materji finanzjarji u kummercjali tal-kuntratt.

Il-Unions esponenti ghandhom ukoll dubbji serji dwar fl-użu tal-fondi pubbliċi u l-assi pubblici, 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 saritx minn periti indipendenti, u jekk il-prezzijiet ikkowotati kinux jirreflettu r-realtajiet tas-suq.

SB
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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' jirriżulta li fil-futur dan jista' jintuża kontra il-pazjenti Għawdxin, jekk dan hux permess taħt il-liġijiet tal-kompetizzjoni, u jekk inghatax eżenzjoni minn dan, u jew dan sarx kif tirrikjedi il-liġi.

Ghal dan kollu, Onorevoli Chairperson tal-Kumitat Parlamentari ghal Kontijiet Pubblici, il-Unions esponenti qed titlob lill-Kumitat minnek mmexxi sabiex jinvestiga fid-dettal il-kuntratt maghmul 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 taghhom, anke jekk necessarju, billi jixhdu quddiem il-Kumitat.

Nirringrazzjak u Nselli Ghalik,

Avv. Jan Spiteri Bailey

Appendix B | Correspondence submitted by the Government members on the Public Accounts Committee to the Chair Public Accounts Committee

5 ta' Diċembru 2016

Liċ-Ċermen
PAC

Lill-membri tal-PAC

Sinjuri,

Bil-preżenti qed nitolbu li l-kuntratti bejn il-gvern u Vitals Global Healthcare (VGH) għall-iżvilupp mill-ġdid, manutenzjoni, u tmexxija tas-siti fl-isptar San Luqa, Sptar ta' Rijabilitazzjoni Karin Grech, u Sptar Ġenerali ta' Għawdex, jintbagħtu lill-Awditur Ġenerali biex jinvestiga:

1. Jekk il-konċessjoni tirrappreżentax valur tajjeb għall-ħlas li ser ikun qed jagħmel il-gvern għas-servizz tas-saħħa pubblika.
2. Jekk in-nefqa kapitali fil-bini ta' faċilitaijiet ġodda, apparat ġdid, it-taħriġ, u l-kwalità tas-servizzi li VGH intrabtu li jagħtu u jmantnu tul il-konċessjoni jikkostitwux titjib fuq is-servizzi eżistenti u, jekk iva, x'livell ta' titjib.
3. Jekk il-kuntratti, inkluż l-investiment fit-turiżmu tas-saħħa u l-iżvilupp fl-iskola medika ta' Barts, jirrappreżentawx benefiċċju ekonomiku għall-pajjiż u jtejjbux is-sostenibilità tas-servizz tas-saħħa fil-pajjiż.
4. Jekk id-drittijiet tal-impjegati fis-settur pubbliku li jagħtu servizz fl-Isptarijiet ta' Għawdex, Karin Grech u San Luqa, humiex mħarsa.
5. Jekk il-kuntratti jikludix proċeduri suffiċjenti biex il-gvern jikkontrolla l-progress fuq l-iżvilupp tal-proġett, kif ukoll il-livell ta' servizz ottjenut.

Nitolbu li l-Awdituri li jittratta kwistjonijiet li huma kummerċjalment sensittivi bid-dovuta kunfidenzjalità, u dan fl-interess pubbliku.

Hon. Ian Borg

Hon. Chris Agius

Hon. Charles Mangion

Hon. Joseph Farrugia

Appendix C | Correspondence submitted by the Opposition members on the Public Accounts Committee to the Auditor General

KAMRA TAD-DEPUTATI

MALTA

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' SPTARIJIET PUBBLIĊI

Nirreferi għat-talba li saret lill-Uffiċċju tiegħek dwar investigazzjoni marbuta mal-kuntratti ta' privatizzazzjoni ta' tliet sptarijiet 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 sptarijiet pubbliċi għal 30 sena, għażel li jittrasferi l-konċessjoni lil terzi f'anqas minn 30 xahar. Dak li tħabbar fil-media u ftit wara kkonfermat mill-Gvern huwa materja li titlob verifika bir-reqqa min-naħa tal-Uffiċċju tiegħek, mhux lanqas minħabba l-mod xejn trasparenti li bih qiegħed jitmexxa dan il-proċess.

Għall-Oppożizzjoni huwa inkwetanti ħafna li s-servizzi tas-saħħa pubblika ta' dan il-pajjiż spiċċaw suġġett ta' negozzjar 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 erbgħin elf Ewro) li tirrappreżenta żieda ta' 108% tal-allokazzjoni oriġinali** approvata fil-Budget għas-sena 2017.

Dan kollu huwa inkwetanti ħafna aktar meta wieħed iqis li mhux biss it-termini kuntrattwali tal-ftehim oriġinali jibqgħu mistura (minħabba li l-Gvern għażel li jippubblika dokumenti bit-termini relevanti kollha ingassati bl-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 ċertezza li teżisti hija dik li l-poplu ser jibqa' jħallas ammonti eżorbitanti sena wara l-oħra, b'din is-sena l-ammont stmat **jaqbeż il-€41,000,000.**

Kif m'għandi l-ebda dubbju li tapprezza d-deċiżjonijiet li qed jittieħdu qed jaffetwaw l-aktar aspett sensittiv tas-servizzi pubbliċi f'pajjiżna, ċioe' dawk tas-saħħa u għaldaqstant nappellalek biex tinvestiga dan it-traferiment prospettiv b'urġenza sabiex ma jiġix kompromess il-ġejjieni ta' dan il-qasam b'mod irreversibbli.

Insellu għalik,

Onor. Beppe Fenech Adami | Onor. Kristy Debono | Onor. Claudio Grech

Membri ta' l-Oppożizzjoni fuq il-Kumitat għall-Kontijiet Pubbliċi

CC: Speaker tal-Kamra tad-Deputati, Kumitat tal-Kontijiet Pubbliċi

REGISTRY
- 8 JAN 2018
NATIONAL AUDIT OFFICE

Appendix D | Correspondence submitted by the Auditor General to the Public Accounts Committee

National Audit Office
Notre Dame Ravelin
Floriana FRN 1600
Malta

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Awditur Ġenerali

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 mibgħuta lill-Kumitat tal-Kontijiet Pubbliċi mill-Union Ħaddiema 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 sptarijiet mogħtija mill-Gvern lil Vitals Global Healthcare. Nagħmel referenza wkoll għall-ittra mibgħuta 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 ntalab 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-għoti tal-konċessjoni lil Vitals Global Healthcare;
2. Analiżi tal-evalwazzjoni tas-sottomissjonijiet li wasslet għall-għotja tal-konċessjoni;
3. Verifika ta' jekk il-mudell kummerċjali li ntuża mill-Konċessjonarju huwiex vijabbli u jekk irappreżentax 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-seħħ biex jiżguraw li ċ-ċittadini Maltin jirċievu trattament fil-ħin;
5. Skrutinju tal-bażi ta' valutazzjoni tas-siti mogħtija lill-Konċessjonarju, il-metodu tat-trasferiment u jekk dan kisirx ir-regolamenti dwar l-għajnuna mill-istat; u
6. Skrutinju tal-proċess permezz ta' liema konċessjoni ġiet 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 meħtieġa. 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.

Verżjoni bl-Ingliż tat-termini ta' referenza hi annessa ma' din l-ittra.

Tislijiet,

C. Deguara

Ink.

Terms of Reference

1. Review the method utlised 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.

2022-2023 (to date) Reports issued by NAO

NAO Annual Report and Financial Statements

July 2022	National Audit Office Annual Report and Financial Statements 2021

NAO Audit Reports

May 2022	Performance Audit: Assisting Individuals with Dementia and their Caregivers within the Community
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