NAO
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 [Abridged]

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
CEO	Chief Executive Officer
DoC	Department of Contracts
EDP	excessive deficit procedure
EU	European Union
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
KGRH	Karin Grech Rehabilitation Hospital
KPI	key performance indicator
LSA	Labour Supply Agreement
MBR	Malta Business Registry
MDH	Mater Dei Hospital
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
PA	Planning Authority
PAC	Public Accounts Committee
PC	Projects Committee
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
UBO	ultimate beneficial owner
UK	United Kingdom
USA	United States of America
VGH	Vitals Global Healthcare

1 Request by the Public Accounts Committee

1.1 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). Related correspondence was subsequently submitted by the Government members on the PAC in December 2016 and by the Opposition members on the PAC in January 2018.

1.2 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).

1.3 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 (MoU) 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).

2 Timeline of key developments

2.1 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. It is pertinent to note that 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. For 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 1 refers).

Figure 1 | Timeline of key events

Date	Key event
February 2014	An MoU was signed between the Government and the Queen Mary University of London (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 Ministry for Energy and Health 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 a Request for Proposals (RfP) for the granting of a services concession for the redevelopment, maintenance, management, and operation of the SLH, the GGH and the KGRH.
27 March 2015	Mr Ram Tumuluri (hereinafter referred to as Director VGH) 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 public private partnership (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 Services Concession Agreement (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.
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 Health Services Delivery Agreement (HSDA). The Agreement regulated the terms and conditions of the purchase by the Government and the supply by VGH Management Ltd of healthcare/clinical and ancillary non-clinical services.
7 December 2015	The Government, represented by the Minister for Energy and Health, and VGH Management Ltd, represented by 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 Labour Supply Agreement (LSA). The LSA allowed for the supply of Government's employees to VGH Management Ltd for the latter to meet the terms of the Transaction Agreements.
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 Chief Executive Officer (CEO) Malta Industrial Parks (MIP) Ltd, appearing for and on behalf of MIP Ltd, in turn appearing for and on behalf of the Commissioner of Land; the Commissioner of Land, in the name and on behalf of the Government and appearing solely for the purposes of the clause relating to the disposal of the sites at the GGH, the 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.
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 human resources (HR).
21 November 2016	Request by the Union Ħaddiema Magħqudin and the Medical Association of Malta 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 National Statistics Office's (NSO) 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.
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.
11 July 2017	Cabinet approved the memorandum submitted by the Minister for Tourism. In submissions to the NAO, the Hon. Joseph Muscat, then Prime Minister (hereinafter referred to as the Prime Minister), maintained that this authorisation by Cabinet extended to a series of financing agreements that the Government, the SHC and the Bank of Valletta (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 (hereinafter referred to as CEO SHC International).
1 September 2017	Mr Keith Schembri, 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 Ministry for Tourism (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.
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 by C6.
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.
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.
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 ultimate beneficial owner (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 Quarter 1 (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 Quality and Assurance Board (QAB) was reconvened following the change of control of the concession. The Board met on a regular basis, once monthly, through till January 2020.

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 United States of America (USA)-registered SHC International LLC.
31 May 2018	Eurostat excessive deficit procedure (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 Ministry for Health (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.
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 Health Management Committee (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 Projects Committee (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.
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 Project Monitoring Board (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 Health Construction Committee (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 United Kingdom (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.
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.
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 the Ministry for Finance (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.
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 Superintendence of Cultural Heritage (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 (hereinafter referred to as the incumbent 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 Planning Authority (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 the SLH. 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'.
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 Malta Business Registry (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 Industrial Innovative Solutions (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 Permanent Secretary (PS) MFH and the PS MFIN, officials of the Foundations for Medical Services, 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.
28 July 2020	The NAO published an addendum to the first part of its audit. The focus of this publication was an MoU that the 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 Hon. Clyde Caruana as Minister for Finance and Employment, 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 Department of Contracts (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 by the SHC, 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.
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.
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.
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 Maintenance Monitoring Board (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.*

2.2 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.

3 The transfer of the concession

Initial interactions between the Government and Steward Health Care

3.1 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 Mr Keith Schembri, the Chief of Staff OPM, who was accompanying the Hon. Joseph Muscat, the then Prime Minister, on an official visit in New York, while the SHC was represented by Dr Armin Ernst, the CEO SHC International. This information was provided by the SHC.

3.2 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 Hon. Chris Fearne, 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.

3.3 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.

3.4 Another contrasting perspective was that provided to the NAO by Mr Ram Tumuluri, 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.

3.5 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.

3.6 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.

3.7 Based on information provided by the SHC, the NAO determined that 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 Hon. Konrad Mizzi, then 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.

3.8 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.

3.9 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.

3.10 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.

3.11 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 concern. 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.

3.12 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.

3.13 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.

3.14 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.

3.15 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.

3.16 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.

3.17 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

3.18 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

3.19 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.

3.20 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).

3.21 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 politically exposed person 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 Financial Action Task Force; 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.

3.22 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

3.23 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.

3.24 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.

3.25 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.

3.26 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.

3.27 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.

3.28 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.

3.29 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.

3.30 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

3.31 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 economical 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.

3.32 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.

3.33 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 the 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, aggravates these concerns.

3.34 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

3.35 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.

3.36 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.

3.37 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.

3.38 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

3.39 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.

3.40 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.

3.41 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 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 SLH, the KGRH and the GGH to the Government.

3.42 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.

4 The failed attempts to revitalise the concession

Of hopeful beginnings

4.1 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.

4.2 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.

4.3 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.

4.4 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.

4.5 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.

4.6 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.

4.7 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.

4.8 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.

4.9 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

4.10 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.

4.11 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.

4.12 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

4.13 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.

4.14 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.

4.15 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.

4.16 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.

4.17 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.

4.18 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.

4.19 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

4.20 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.

4.21 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.

4.22 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.

4.23 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.

4.24 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.

4.25 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.

4.26 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.

4.27 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.

4.28 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.

4.29 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.

4.30 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.

4.31 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.

4.32 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.

4.33 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.

4.34 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.

4.35 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 Hon. Edward Scicluna, then Minister for Finance, explained that MFIN, the MFH and the MOT were coordinating the monitoring of that agreed.

4.36 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.

4.37 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.

4.38 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.

4.39 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.

4.40 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.

4.41 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.

4.42 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.

4.43 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.

4.44 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.

4.45 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.

4.46 The NAO sought to establish whether this contingent liability was referred to the State Aid Monitoring Board (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

4.47 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.

4.48 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 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.

4.49 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.

4.50 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.

4.51 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.

4.52 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.

4.53 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.

4.54 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.

4.55 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.

4.56 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 risks 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.

4.57 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.

4.58 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.

4.59 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.

4.60 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.

4.61 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.

4.62 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.

4.63 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.

4.64 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

4.65 On 13 January 2020, the Hon. Robert Abela took office as Prime Minister (hereinafter referred to as the incumbent 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.

4.66 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.

4.67 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.

4.68 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.

4.69 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.

4.70 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

4.71 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.

4.72 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 Foundation for Medical Services, 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.

4.73 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.

4.74 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, the Hon. Clyde Caruana, 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.

4.75 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.

4.76 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.

4.77 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.

4.78 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.

4.79 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.

4.80 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.

4.81 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.

4.82 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.

4.83 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.

4.84 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.

4.85 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.

4.86 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

4.87 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.

4.88 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 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.

4.89 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.

4.90 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.

4.91 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.

4.92 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.

4.93 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.

4.94 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.

4.95 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.

4.96 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.

5 Comparison of the contractual framework with the Request for Proposals

5.1 While sections 3 and 4 of the abridged report present a chronological account of the entry of the SHC and its subsequent negotiations with the Government, the ensuing sections focus on the implementation of the contractual framework. This analysis corresponds to the period within which the concession was under the control of the SHC and encompasses the consideration of the SCA, the HSDA, the LSA and the Emphyteutical Deed.

5.2 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

5.3 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.

5.4 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.

5.5 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.

5.6 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.

5.7 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 Treaty on the Functioning of the European Union 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

5.8 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

5.9 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.

5.10 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.

5.11 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.

5.12 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. 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.

5.13 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.

5.14 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

5.15 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.

5.16 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.

5.17 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.

5.18 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

5.19 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.

5.20 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.

5.21 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.

5.22 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.

5.23 A matter deemed of primary importance by the PC and revisited in several meetings was the classification of the concession as on-balance sheet, 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.

5.24 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.

5.25 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.

5.26 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

5.27 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.

5.28 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 provides a mechanism for oversight that has not been 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.

5.29 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

5.30 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.

5.31 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.

5.32 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.

5.33 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.

5.34 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.

5.35 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.

5.36 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.

5.37 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.

5.38 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.

5.39 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 the Environmental Resources Authority 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.

5.40 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'.

5.41 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.

5.42 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.

5.43 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

5.44 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).

5.45 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.

5.46 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.

5.47 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.

5.48 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.

5.49 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.

5.50 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

5.51 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.

5.52 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.

5.53 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.

5.54 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'.

5.55 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.

5.56 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.

5.57 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

5.58 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 5 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 6 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.

5.59 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

5.60 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.

5.61 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.

5.62 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

5.63 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.

5.64 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.

5.65 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.

5.66 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 engineering, procurement and construction 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 capital expenditure 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.

5.67 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.

5.68 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.

6 Implementation of the Health Services Delivery Agreement by Steward Health Care

6.1 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

6.2 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.

6.3 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.

6.4 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.

6.5 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.

6.6 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.

6.7 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 Mater Dei Hospital (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.

6.8 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.

6.9 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.

6.10 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.

6.11 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

6.12 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.

6.13 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.

6.14 Several indicators were established by the GGH to measure clinical effectiveness. Certain were generic in nature, such as hospital readmission rates and average length of stay (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 new-borns provided positive results, also evidenced in the significant decrease in ALOS for c-section deliveries. Nevertheless, the trend corresponding to the percentage of new-borns 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.

6.15 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.

6.16 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.

6.17 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.

6.18 The KGRH drew up its first key performance indicators (KPIs) 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.

6.19 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.

6.20 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.

6.21 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.

6.22 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.

6.23 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.

6.24 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, health acquired 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.

6.25 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.

6.26 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

6.27 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.

6.28 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.

6.29 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.

6.30 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.

6.31 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 information technology, 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

6.32 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.

6.33 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.

6.34 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.

6.35 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

6.36 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.

6.37 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.

6.38 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

6.39 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.

6.40 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.

6.41 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.

6.42 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.

6.43 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.

6.44 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.

7 Implementation of the Labour Supply Agreement by Steward Health Care

7.1 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.

7.2 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.

7.3 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.

7.4 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.

7.5 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.

7.6 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.

8 Implementation of the Emphyteutical Deed by Steward Health Care

8.1 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.

8.2 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.

8.3 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.

8.4 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 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.

8.5 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.

8.6 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. Nevertheless, such breach was not listed among the events of default permitting termination in the SCA.

8.7 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.

8.8 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.

8.9 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 Steward Health Care's ownership and finances

9.1 Aside from the review of the implementation of the contractual framework addressed in sections 5 to 8 of this abridged report, the NAO considered the corporate structure of the Concessionaire, particularly in view of changes made thereto. These were at times the result of the internal restructuring of the Concessionaire and on other instances due to changes in the ownership of the SHC.

Changes in the corporate structure behind the concession

9.2 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.

9.3 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.

9.4 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.

9.5 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.

9.6 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.

9.7 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 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.

9.9 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 Malta Strategic Partnership Projects Ltd (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.

9.10 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.

9.11 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.

9.12 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

9.13 The NAO also analysed the financial performance of the companies either directly responsible for the concession or related thereto. The analysis included the Steward Malta Group, Steward Malta Ltd, Steward Malta Assets Ltd, Steward Malta Management Ltd, Steward Malta Personnel Ltd and SHC International Ltd. This Office's interest in the finances of these companies emanated from the fact that their revenue was in the main generated through the payments effected by the Government in connection with the concession.

Consolidated financial statements of Steward Malta Group

9.14 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.

9.15 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

9.16 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.

9.17 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.

9.18 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

9.19 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.

9.20 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.

9.21 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.

9.22 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

9.23 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.

9.24 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.

9.25 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.

9.26 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

9.27 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.

9.28 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.

9.29 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

9.30 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.

9.31 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.

9.32 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.

9.33 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.

9.34 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.

9.35 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

9.36 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.

9.37 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.

9.38 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.

9.39 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

9.40 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.

10 Malta Enterprise's systematic failure to cooperate

10.1 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.

10.2 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 to the QMUL, does not constitute sensitive data and should be subject to scrutiny by Parliament and accountability to taxpayers.

11 Overall conclusion

11.1 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.

11.2 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.

11.3 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.

11.4 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.

11.5 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.

11.6 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.

11.7 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.

11.8 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.

11.9 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.

11.10 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.

11.11 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.

11.12 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.

11.13 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.

11.14 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.

11.15 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.

11.16 As regards the Emphyteutical Deed, the circumstances relating to 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 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.

11.17 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.

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

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