



**CIVIL COURT
FIRST HALL**

**THE HON. MR JUSTICE
DR FRANCESCO DEPASQUALE**

LL.D. LL.M. (IMLI)

**Sitting of Friday
Twenty-fourth (24) February 2023**

Application Number 133/2018 FDP

In the names

**The Honourable Leader of the Opposition Advocate Dr Adrian Delia
(ID 299369M)**

VS

The Honourable Prime Minister of Malta, Dr Joseph Muscat

The Attorney General

**The Chief Executive of Malta Industrial Parks Limited, that by virtue of a decree dated
16 November 2021 changed its name of INDIS Malta Ltd,**

**Vitals Global Healthcare Assets Limited, that by virtue of a decree dated 16 November 2021
changed its name to Steward Malta Assets Limited**

**Vitals Global Healthcare Limited, that by virtue of a decree dated 16 November 2021
changed its name to Steward Malta Limited**

**Vitals Global Healthcare Management Limited, that by virtue of a decree dated
16 November 2021 changed its name to Steward Malta Management Limited**

**The Chief Executive of the Lands Authority who assumed the functions previously assumed
by the Commissioner of Land**

The Chairman of the Board of Governors of the Lands Authority

The Court:-

1. Having regard to the application dated 19 February 2018 whereby the applicant Dr Adrian Delia, as Leader of the Opposition and Member of the House of Representatives, requested the following:

1. *That through a temporary emphyteusis contract of 22 March 2016, in the records of Notary Thomas Vella, between on the one part, Malta Industrial Parks Limited and the Commissioner of Land, representing the Government of Malta, and on the other part, Vitals Global Healthcare Assets Limited, a number of sites in Malta and Gozo, that is, the site of St Luke's Hospital, the site of Karin Grech Hospital, as well as the site of Gozo General Hospital, were transferred by titles of temporary emphyteutical concession for a renewable period of thirty (30) years for the purposes indicated therein, whereby this contract is attached herein and marked as "Document A".*
2. *That according to the above-mentioned temporary emphyteutical concession it was stipulated pursuant to clause 4.5.2.2 (e), it was established that,*

In addition to all its other obligations contained in this Emphyteutical Deed, at its own cost and expense and as applicable at all times throughout the Original Term and, if applicable, the Extended Term, the Grantee shall:

(e). not sell, transfer, alienate or in any manner dispose of or otherwise encumber the Sites (or attempt to do so) save and except as expressly set forth in this Emphyteutical Deed and the Related Instruments or as expressly authorised in writing by the Grantor, provided that the Grantee and / or its assignees shall be free to create such encumbrances over and on the Sites in favour of the Primary Lenders.

3. *That the Related Instruments are the Service Concession Agreement, the Health Services Delivery Agreement, the Labour Supply Agreement and any amendments and/or addendum thereto whereby these documents form an integral part of the above-mentioned temporary emphyteutical concession, whereby these documents are attached herein and marked as "Documents B and C".*
4. *That a copy of these Related Instruments was tabled at the House of Representatives at sitting number 429 of 19 October 2016.*
5. *That the purposes of this property transfer as transpires from the above-mentioned temporary emphyteusis contract pursuant to clause 4.3.1 are "Procuring the Development Obligations thereon in accordance with the provisions of this deed and for the sole use of the sites for the Provision of Healthcare and Medical Services and ancillary and related services including the services envisaged in the Services Concession Agreement."*
6. *That the Development Obligations are the obligations of Vitals Global Healthcare Assets Limited (C70625) and of the Concessionaire that is Vitals*

Global Healthcare Management Limited (C 70624) and Vitals Global Healthcare Limited (C 70546) to ensure that all that was to be executed by the Concessionaire would be executed according to the Services Concession Agreement in the redevelopment of the sites granted by this temporary emphyteutical concession.

7. *That the Services Concession Agreement is the agreement reached between the Government, the concessionaire and the emphyteuta for the development of the hospitals according to the agreement reached.*
8. *That consequently all the respondents were in solidum between them obliged to carry out the obligations as arising from the temporary emphyteutical concession.*
9. *That these obligations consisted, among others, the construction of a medical school and teaching facilities in consultation with the Maltese Government, the development and creation of state-of-the-art research and development facilities in the health sector, and a medical campus in Malta and Gozo, the construction and operation of a regional primary care hub at Gozo General Hospital, the redevelopment of Gozo General Hospital and the creation of a medical campus in Malta and Gozo and the modernisation of Gozo General Hospital;*
10. *That all this had to be executed on the basis of a Health Services Delivery Agreement and of the Services Concession Agreement, herein attached and marked as Document B, both signed on 30 November 2015 according to a document tabled at the House of Representatives at sitting number 429 of 19 October 2016, “Document D” herein attached;*
11. *That these Agreements govern the services concession in the hospitals specified in the above-mentioned temporary emphyteutical concession and form an integral part of the temporary emphyteutical concession given on 22 March 2016 as transpires from the same temporary emphyteutical concession pursuant to Article 4.3 of the same contract, Document A herein attached.*
12. *That this replacement, construction and services that had to start being provided by Vitals Global Healthcare Limited and Vitals Global Healthcare Management Limited according to the above-mentioned concession agreement, had to be completed according to completion milestones, that is, handover plans, design plans, Barts College at the Gozo Campus, fifty (50) additional beds at Karin Grech Hospital, St Luke’s, eighty (80) rehabilitation beds at Saint Luke’s Hospital, the completion of the new building at Gozo General Hospital, the completion of the refurbishment of Gozo General Hospital, and the completion of beds for medical tourism at St Luke’s Hospital to be completed according to the established terms and not disclosed to the public, however definitely prior to the three-year deadline from the signing of the said Agreement of 30 November 2015.*
13. *That these completion milestones were not reached and have not been even started, let alone completed.*

14. *That consequently the purpose for which this temporary emphyteutical concession was granted was not executed in its essence, according to the above-mentioned Parliamentary Resolution.*
15. *That pursuant to clause 15.1 of the Services Concession Agreement that forms an integral part of the temporary emphyteutical concession and the reason why this temporary emphyteutical concession was granted pursuant to clause 4.3 of the said above-mentioned contract, the respondents Vitals Global Healthcare Limited and Vitals Global Healthcare Management Limited had the right to assign their obligations after the three (3) year period from the completion date that is from the date when the completion certificate that confirms that the completion milestones were reached, and that the works were completed, and these two above-mentioned companies as concessionaires could not transfer, assign, or in any other way, dispose of their shares and/or the shares of their subsidiaries.*
16. *That the three years stipulated by law have not yet passed since these agreements, let alone three years since the completion of the completion milestones associated with the completion of works on the sites as mentioned and listed above, nor have any penalties been paid according to schedule number 6, page 124 of the Services Concession Agreement.*
17. *That, consequently, according to the terms of the above-mentioned temporary emphyteutical concession, this share sale transfer to third parties and/or property transfer cannot be authorised because the completion milestones for the completion of works on the sites were not achieved according to the agreement reached through the temporary emphyteutical concession and the Services Concession Agreement signed between the respondents.*
18. *That the Chief Executive of the Lands Authority and the Attorney General cannot approve this land transfer to third parties pursuant to Article 4.7 of the emphyteutical concession since the emphyteuta's obligations were not fulfilled according to the said contract.*
19. *That, in any event, the Chief Executive of the Lands Authority and the Attorney General have to ensure that the principles of the temporary emphyteutical concession and the conditions stipulated therein are therefore fulfilled as stipulated in the said emphyteutical concession contract which refers to this Service Concession Agreement and the Health Services Delivery Agreement and is an integral part of the said temporary emphyteutical concession.*
20. *That by means of a judicial protest of 29 January 2019, "Document E" attached herein, the applicant requested that if the Chief Executive of the Lands Authority and the Attorney General were not going to take the necessary action according to law for the fulfilment of the obligations as arising from the said temporary emphyteutical concession, "Document A" in the proceedings and the Services Concession Agreement, they would be failing to protect public property and the interests of the said public in the developments that had to be carried out on the hospital sites, whereby this obligation emanates from the circumspection of their rights and in the failure of the emphyteuta's obligations pursuant to Cap. 573 of the Laws of Malta.*

21. *That, in any event, and without prejudice to the above, in any case and in any eventuality and after three years have passed from the concession milestones, it must be ensured that with the transfer of these rights and obligations to any third party, as established in the same Agreement, the party to whom these rights are transferred shall be a person of good standing and of good reputation, and prior to this, the Maltese Government shall be informed no later than three months prior to such a transfer, and all the details regarding this transfer shall be given, whereby these details shall be scrutinised by the House of Representatives.*
22. *That since the Attorney General and the Chief Executive of the Lands Authority are not going to take the necessary steps according to law, that is, Cap. 573 of the Laws of Malta, to ensure that Vitals Global Healthcare Assets Limited, prior to attempting to transfer the above-mentioned temporary emphyteutical concession to third parties, ensure that they fulfil the obligations according to the Agreement approved by the House of Representatives, both in regard to the temporary emphyteutical concession contract of 22 March 2016 in the records of Notary Dr Nicholas Vella and the Agreement of 30 November 2015, as well as in regard to the Health Services Delivery Agreement and the Services Concession Agreement, the applicant is obliged to act in the interest of the Maltese people pursuant to Cap. 573 of the Laws of Malta for the safeguarding of public property and of the terms and conditions approved by the said House of Representatives.*

Therefore, the respondents, or whomsoever of them, should state, subject to any necessary and opportune declaration and for the reasons premised, why this Court should not:

- (I) *Declare and decide that the respondents Vitals Global Healthcare Assets Limited, Vitals Global Healthcare Limited and Vitals Global Healthcare Management Limited did not fulfil and violated their obligations according to the contract of 22 March 2016 in the records of Notary Dr Thomas Vella and of the Service Concession Agreement, the Health Services Delivery Agreement, the Labour Supply Agreement and amendments and/or addenda, whereby these documents form an integral part of the above-mentioned temporary emphyteutical concession.*
- (II) *Declare and decide that the Related Instruments form an integral part of the temporary emphyteutical concession of 22 March 2016 in the records of Notary Dr Thomas Vella.*
- (III) *Declare and decide that the Chief Executive of the Lands Authority who assumed the functions previously assumed by the Commissioner of Land and the Chairman of the Board of Governors of the Lands Authority and the Attorney General are obliged according to law to safeguard public property and to take the necessary steps to ensure that all the conditions of the property conceded by the Chief Executive of the Lands Authority are fulfilled and unchanged according to the said contracts and the resolution of the House of Representatives.*

i. Cancel and annul the temporary emphyteutical concession in the

records of Notary Dr Thomas Vella of 22 March 2016 and the Related Instruments that form an integral part of the above-mentioned temporary emphyteutical concession and order the return of all the property where the sites of St Luke's Hospital, St Luke's Road, Pieta, with an area of 54,729 square metres, Karin Grech Rehabilitation Hospital in St Luke's Road, Pieta, with a superficial area of 768 square metres and Gozo General Hospital. of 72,880.92 square metres in Triq l-Isqof Pietro Pace, Rabat, Gozo as better described in the above-mentioned emphyteutical concession by the said Chief Executive of the Lands Authority.

- (IV) *Appoint a Notary to publish the relative deed for the cancellation and invalidity of the said temporary emphyteutical concession on a day, time and place as established by this Court.*
- (V) *Appoint deputy curators to represent the Chief Executive of the Lands Authority, the Chief Executive Officer of Malta Industrial Parks Limited and the Government of Malta and/or Vitals Global Healthcare Assets Limited on the cancellation and invalidity deed of the said emphyteutical concession in the records of Notary Dr Thomas Vella of 22 March 2016.*

With costs including for the protest of 29 January 2019 and with the summons of the respondents to give evidence.

2. Having regard to the documentation which was filed by the applicant together with the application initiating proceedings, that is:
 - a. Emphyteutical concession contract dated 22 March 2016 in the records of Notary Dr Thomas Vella, between Malta Industrial Parks Limited and the Commissioner of Land, on the one part, and Sir Ram Tumuluri on behalf of and representing the company Vitals Global Healthcare Assets Limited. (fol 8)
 - b. Health Services Delivery Agreement dated 30 November 2015 executed by means of a private deed between the Government of Malta and Vitals Global Healthcare Management Limited. (fol 41 to 166)
 - c. Labour Supply Agreement dated 8 January 2016 executed by means of a private deed between the Government of Malta and Vitals Global Healthcare Management Limited. (fol 167 to 179)
 - d. Judicial Protest dated 29 January 2019 tabled at the First Hall of the Civil Court by the applicant together with all the Members of Parliament elected for the Nationalist Party. (fol 181- 185)
3. Having regard that on 6 March 2018, the **Chief Executive of the Lands Authority and the Chairman of the Board of Governors of the Lands Authority** repudiated that which was requested by raising the following defence: (fol 193)
 1. *Preliminarily, the objecting parties are not the legitimate opposing parties and should be considered nonsuited because:*
 - a. *the powers vested in the Commissioner of Lands pursuant to*

Chapter 169 (repealed) were vested in the Lands Authority that has a distinct legal personality (Article 6(1) of Chapter 563) and the powers of the Lands Authority were vested in the Board of Governors (Article 6(2) of Chapter 563);

- b. regarding the land that is the subject of the present case, by means of two subsidiary legislations, S.L. 94/16 and S.L. 96/16 attached documents, Doc. A and Doc. B, respectively, the powers and obligations reserved by Law to the Commissioner of Land (Chapter 169 repealed) were vested ope legis in Malta Industrial Parks. This position was set by article 4 of Chapter 573 of the Laws of Malta such that even if the objecting parties were to do something, legally there are precluded from doing it.*
 - 2. That without prejudice to the above, this action, pivoted on Article 33(2) of Chapter 573, should not succeed since this article grants a limited right to the Attorney General or a Member of Parliament to request the cancellation of the transfer, when this transfer itself would have been executed in violation of article 31 of Chapter 573. The same article also does not give the right to table a case when a contract breach is alleged as this case is formulated;*
 - 3. That without prejudice to the above, in any case the applicant demands are unfounded in fact and at law;*
 - 4. Except for other pleas.*
 - 5. With costs.*
4. Having regard to the documentation presented by the Chief Executive of the Lands Authority and the Chairman of the Board of Governors of the Lands Authority, that is Legal Notice No. 94 of 2016 and Legal Notice No. 95 of 2016, both issued under the Commissioner of Land Ordinance (Cap. 169) and entitled “Commission of Land (Transfer of Rights and Liabilities) (No. 4) Order 2016” and “Commissioner of Land (Transfer of Rights and Liabilities) (No. 4) (Amendments) Order 2016” respectively, (fol 195 and fol 196)
 5. Having regard that on 9 March 2018, the **Honourable Prime Minister** as well as the **Attorney General** repudiated that which was requested by raising the following defence: (fol 201)
 - 1. That, preliminarily, the petitioners the Honourable Prime Minister and the Attorney General are not the legitimate opposing parties for the action pursuant to Article 181B of the Code of Organisation and Civil Procedure (Cap. 12 of the Laws of Malta) and therefore, even if solely for this reason, should be considered nonsuited.*
 - 2. That, also preliminarily, the petitioners object to the absence of applicability of Article 33 of the Government Land Act (Chapter 573 of the Laws of Malta) for the applicant’s allegations and consequently the absence of the applicant’s locus standi to take this action. This is because that provision applies only and is exclusively circumscribed to*

the time when the land is transferred, that is, to the issue whether the land transfer took place in observance of the provisions of Article 31 of Cap. 573 of the Laws of Malta. That Article 33 of Cap. 573 of the Laws of Malta does not make provision for the declaration of invalidity and/or cancellation of the share transfers of commercial companies or for the alleged contract breach of the conditions of a contract concluded according to the Government Land Act. To the contrary, Article 33 applies only in regard to land transfers that are executed in observance of Article 31 of Cap. 573. That, also contrary to what he is expecting, the plaintiff applicant was granted no special capacity by Cap. 573 for supervision of the execution of contractual obligations during an emphyteusis through a judicial action and this renders this action irregular and unreceivable.

3. *That, also preliminarily and without prejudice to the above, the absence of locus standi and of judicial interest of the plaintiff applicant in that Article 33 of Cap. 573 since the action as postulated to contest the transfer of assets in a commercial company and to cancel the land transfer on the basis of an alleged contract breach should only rest if anything with the signatory parties of the contracts that are the subject to this action but not with the plaintiff applicant.*
4. *That, also preliminarily and without prejudice to the above, the petitioners object to the absence of a judicial basis for this action on the part of the applicant in that the said action is based on the confusion between land transfer and the transfer of shares in a commercial company that are, in fact, two distinct and separate matters both factually as well as judicially;*
5. *That, without prejudice to the above, both the **Service Concession Agreement** and the **Health Services Delivery Agreement**, although related to the emphyteutical concession, do not form part of the said temporary emphyteutical concession but constitute contracts regarding the provision of services that are separate and distinct from the land transfer, such that these two agreements were concluded prior to the public contract through which the land was transferred, whereby this transfer was executed in observance of the provisions of Cap. 573 of the Laws of Malta;*
6. *That, subject to the above, the applicant's demands are unfounded in fact and at law and should be rejected.*
7. *Except for other objections if any.*

With costs.

6. Having regard that on 9 March 2018, the **Chief Executive of Malta Industrial Parks Limited** repudiated that which was requested by raising the following defence: (fol 205)

1. *That preliminarily, the petitioner, in his premised capacity, does not have the authority to serve any public function and therefore is not a legitimate opposing party and should be considered nonsuited;*

2. *That subordinately and without prejudice to the premised, but always preliminarily, that the applicant's action is incomplete since it does not include the reason for the demand as required by Art. 156 of Cap. 12 nor does it state on which legal provision he is basing his complaints and therefore the petitioner is not in a position to defend himself properly and therefore the demand should be rejected;*
3. *That subordinately and without prejudice to the premised, but always preliminarily, that the applicant has no judicial interest as required by law in order to exercise this action and therefore the demand should be rejected;*
4. *That subordinately and without prejudice to the premised, but always preliminarily, on condition that the plaintiff action is based on the provisions of Art. 33 of Cap 573, the absence of locus standi of the applicant since such a provision cannot be invoked in order to verify the compliance or otherwise of contractual obligations arising from the public land contracts;*
5. *That subordinately and without prejudice to the premised, but always preliminarily, in that the action criticises a commercial agreement, whereby these contracts are res inter alios acta [cannot adversely affect the rights of anyone who is not a party to the contract] for the applicant and independent of the concession transferred here, the applicant has no interest and/or right to request a judicial intervention and the demands in this regard should be rejected;*
6. *That subordinately and without prejudice to the premised, there is no shortcoming or breach in regard to the concession that is the subject of this cause;*
7. *That, subordinately and without prejudice to the premised, the plaintiff's demands are unfounded in fact and at law and should be rejected;*
8. *Except for other objections.*

With costs.

7. Having regard that on 27 March 2018, the respondent companies **Vitals Global Healthcare Assets Limited, Vitals Global Healthcare Limited and Vitals Global Healthcare Management Limited**, repudiated that which was requested by raising the following defence: (fol 212)

1. *That preliminarily, it must be noted that the plaintiff's Sworn Application is null and void pursuant to Article 789(1) of Chapter 12 of the Laws of Malta, in reference to the provision in Article 156(1)(a) of Chapter 12 of the Laws of Malta, that the application initiating proceedings does not have "a statement which gives in a clear and explicit manner the subject of the cause" precisely in view of the fact that, although the applicant makes a generic reference to Cap. 573 of the Laws of Malta, he does not specify under which article he is basing his action, whereby such a shortcoming places the petitioners in a position such that they cannot*

defend themselves properly;

2. *That subordinately and without prejudice to the premised, but always preliminarily, the plaintiff should prove his judicial interest to propose and proceed with this action;*
3. *That subordinately and without prejudice to the premised, but always preliminarily, a general principle of our Laws is that the contract in which a person is not a party, is inter alios to them and therefore the said contracts mentioned in the application initiating proceeding are unequivocally res inter alios acta for the applicant.*
4. *That subordinately and without prejudice to the premised, there is no contractual shortcoming nor a breach in regard to the concession that is the subject of this cause;*
5. *That, subordinately and without prejudice to the premised, the plaintiff's demands are unfounded in fact and at law and should be rejected;*
6. *Except for other objections.*

With costs.

8. Having regard that on 10 May 2018, the respondent Prime Minister, Attorney General and Lands Authority requested that their preliminary objection be decided regarding the impossibility of this action pursuant to Article 573, whereby this demand was rejected by the Court, presided differently, on that same day. (fol 221-222)
9. Having regard that on 14 May 2018, the applicant requested to be granted the possibility to appeal such a decision (fol 223), whereby this demand was accepted by the First Hall in the sitting of 28 May 2018. (fol 241)
10. Having regard that on 28 May 2018, the respondent Vitals companies requested that the proceedings should proceed behind closed doors with a ban on publication (fol 235-238), whereby this demand was rejected by the Court after hearing the parties deliberate during the sitting of 28 May 2018. (fol 239- 240)
11. Having regard that on 28 May 2018, the cause was deferred Sine Die until the matter raised before the Court of Appeal was decided.
12. Having regard that on 29 March 2019, the Court of Appeal rejected the respondents' demand in order that their first objection be considered and taken into account prior to the Court hearing the testimonies regarding the subject of the cause.
13. Having regard that on 29 March 2019, the applicant filed an application in order that the cause would be placed on the list of causes, whereby this decree was accepted on 3 April 2019.

EVIDENCE

14. Having regard that on 26 April 2019, the applicant, **Dr Adrian Delia**, presented his affidavit together with documentation.
15. Having regard to the testimony of **Albert Gauci Cunningham**, editor of the

newspaper Illum, given on 26 April 2019 and having seen the documentation he presented, that is articles that he edited.

16. Having regard that this Court, as comprised, took the acts into consideration on 17 of October 2019.
17. Having heard the testimony of **Ray Grillo**, representative of the Clerk of the House of Representatives, who presented the contracts tabled at the House of Representatives in the sitting of 19 October 2016, all of which had redacted parts, whereby this documentation was presented by the Minister for Health Dr Konrad Mizzi. (fol 317 to 470) that is:
 - a. *Service Concession Agreement* signed on 30 November 2015. (fol 318 to 388)
 - b. *Health Services Delivery Agreement* signed on 30 November 2015. (fol 389 to 463)
 - c. *Labour Supply Agreement* signed on 8 January 2016. (fol 464 to 470)
18. Having regard that on 26 November 2019, a legal copy of the **Emphyteutical Concession Contract** of 22 March 2016 was presented together with attached plans (fol 473 to 497) as well as **Warrant of Prohibitory Injunction No. 157/18 in the names of Ashok Rattehalli vs Bluestone Investments Malta Limited and Vitals Global Healthcare Limited**, dated 29 January 2018, that also included:
 - a. an agreement between Rattehalli and the company Bluestone Investments Malta Ltd dated 12 May 2015 related to the tender that the Government had issued for the Hospitals, as aforementioned, and payments that had to be made to Rattehalli. (fol 500-513)
 - b. Memorandum of Understanding (fol 515) dated 23 November 2014 between Dr Ambrish Gupta on behalf of Medical Associates of Northern Virginia Inc. and a group of investors specified as AGMC Incorporated of Dr Ashok Rattehalli, Portpool Investments Limited of Ram Tumuluri, and Bluestone Special Situation 4 Limited of Mark Pawley, in which there was an agreement regarding the setup of a company and the division of the costs and profits in a project.
19. Having heard the testimony of **Dr Claudette Fenech**, as representative of the Malta Business Registry, on 26 November 2019, whereby she presented all the documentation in possession of the said Malta Business Registry, in connection with the company Steward Malta Assets Limited (C 70625) registered on 18 May 2015 (Vol III - fol 538), the company Steward Malta Management Limited (C 70624), registered on 18 May 2015 (Vol III - fol 583) and the company Steward Malta Ltd, registered on 13 May 2015. (Vol III - fol 635)
20. Having heard the testimony of **Dr Peter Fenech**, legal consultant of Dr Ashok Rattehalli, given on 26 November 2019.
21. Having heard the testimony of **Dr Konrad Mizzi**, Minister for Tourism, given on 26 November 2019.
22. Having heard the testimony of **Dr Martin Balzan**, President of the Medical Association of Malta, given on 26 November 2019 and having seen the documentation he presented.

23. Having regard that on 28 November 2019, the applicant requested that the respondents present the Evaluation Report mentioned by Dr Konrad Mizzi in his testimony, whereby the respondent Prime Minister and Attorney General objected to this report.
24. Having regard that on 9 December 2019, the Court accepted the demand and ordered that it should be presented by the next sitting.
25. Having regard that in the sitting of 11 December 2019, the legal consultants of the Attorney General and the Prime Minister advised that they did not have a copy of the Evaluation Report, in that the copy was held by Projects Malta, and therefore the Court ordered that a representative of Projects Malta had to be summoned as a witness.
26. Having heard the testimony of **James Camenzuli**, Executive Chairman of Projects Malta Limited and Chairman of the **Evaluation and Adjudication Committee** responsible for the evaluation of the offer that had been made by the company Vitals, given on 27 January 2020, and having seen the document he presented, that is, the **Evaluation Report**, whereby, due to its nature, he was ordered that this would only be accessible to the parties and not the public.
27. Having heard the additional testimony of James Camenzuli given on 3 July 2020.
28. Having heard the testimony of **Manwel Castagna**, member of the **Evaluation and Adjudication Committee** responsible for the evaluation of the offer made by the company Vitals, given on 3 July 2020.
29. Having heard the testimony of the Auditor General **Charles Deguara**, given on 23 September 2020, where he presented the report redacted by his Office entitled ‘**An Audit of Matters relating to the concession awarded to Vitals Global Healthcare by Government – Part 1: A review of the tender process**’, (fol 933 to 1042) as well as another document entitled ‘**Addendum**’ (fol 1043 to 1053), presented in July 2020.
30. Having heard the additional testimony of Manwel Castagna, given on 23 September 2020 and having seen the Request for Proposals published by the Government of Malta on 27 March 2015 entitled “Services Concession for the Redevelopment, Maintenance, Management and Operation of the Sites at St Luke’s Hospital, Karin Grech Rehabilitation Hospital and Gozo General Hospital.” (fol 1082)
31. Having heard the testimony of **Robert Borg**, member of the **Evaluation and Adjudication Committee** responsible for the evaluation of the offer made by the company Vitals, given on 23 September 2020.
32. Having heard the testimony of **Mario Cutajar**, Principal Permanent Secretary to the Government, given on 18 November 2020 and having seen the **Memorandum of Understanding signed on 10 October 2014** between a group of investors and the Government of Malta, which he presented. (fol 1158)
33. Having heard the testimony of **William Wait**, who for a time was Director at the company Projects Malta Limited, given on 18 November 2020.
34. Having heard the testimony of **Alfred Camilleri**, Permanent Secretary at the Ministry for Finance, given on 18 November 2020 and having seen the documentation he presented.

35. Having heard the testimony of **Professor Edward Scicluna**, Minister for Finance, given on 9 December 2020.
36. Having heard the testimony of **Adrian Said**, who for a time was Executive Chairman at Projects Malta Limited, given on 9 December 2020.
37. Having heard the testimony of **Dr Joseph Muscat**, Prime Minister of Malta between 2013 and 2020, given on 18 January 2021.
38. Having heard the testimony of **Ronald Mizzi**, Permanent Secretary at the Ministry for Tourism, and, at the time of the signing of the contracts that are the subject of this cause, Permanent Secretary at the Ministry for Energy, Health and Project, given on 8 February 2021, and having seen the documentation he presented, that is, an Agreement dated 27 August 2019 between the Government, the Steward companies and Bank of Valletta plc.
39. Having heard the additional testimony of Dr Konrad Mizzi on 8 February 2021.
40. Having regard that on 24 February 2021, **Ronald Mizzi**, in compliance with that which was requested of him in the sitting of 8 February 2021, presented the following documentation in connection with this contract: (Vol VI fol 1528 to Vol VIII fol 2076)

A. Side Letter to Transaction Agreements entered into on 19 May 2016

- a. BOV Performance Guarantee dated 3 March 2016
- b. BOV Correspondence dated 12 April 2016
- c. Vitals Global Healthcare Assets Limited, 19 May 2016 + Memorandum and Articles of Association of Vitals Global Healthcare Assets Limited
- d. Vitals Global Healthcare Management Limited, 19 May 2016 + Memorandum and Articles of Association Vitals Global Healthcare Management Limited
- e. Vitals Global Healthcare Limited, 19 May 2016 + Memorandum and Articles of Association Vitals Global Healthcare Limited
- f. Resolution - Vitals Global Healthcare Assets Limited dated 22 March 2016
- g. Resolution - Vitals Global Healthcare Management Limited dated 22 March 2016
- h. Resolution - Vitals Global Healthcare Limited dated 22 March 2016
- i. Agreement dated 17 February 2016 between Vitals Global Healthcare Ltd and Vitals Global Healthcare Management Limited and Shapoorji Pallonji Mideast LLC
- j. Allianz - dated 15 December 2015
- k. Osprey Insurance Brokers - Reference No.: VGH/PROP/SMC/16/001 dated 19 May 2016
- l. Osprey Insurance Brokers - Reference No.: VGH/PPMM/SMC/16/001 dated 19 May 2016
- m. Osprey Insurance Brokers - Reference No.: VGH/EL/SMC/16/001 dated 20 May 2016
- n. Side Letter to Transaction Agreements dated 15 September 2016

B. Health Services Delivery Agreement dated 30 November 2015

- a. Addendum to Health Services Delivery Agreement dated 7 December 2015
- b. Addendum to Health Services Delivery Agreement dated 7 December 2015

- c. Addendum to Health Services Delivery Agreement dated 30 June 2017

C. Emphyteutical Deed

D. Labour Supply Agreement dated 8 January 2016

- a. Addendum to the Labour Supply Agreement dated 30 June 2017

E. Services Concession Agreement dated 30 November 2015

- a. Agreement between the Government of Malta and Vitals Global Healthcare Management Limited dated 7 December 2015
- b. Addendum to Services Concession Agreement dated 30 June 2017
- c. Side Letter to the Services Concession Agreement entered into 14 February 2017
- d. Side Letter to the Services Concession Agreement entered into 23 June 2017

F. Parent Company Guarantee dated 19 May 2016

G. Financial Documents with BOV

- a. Agreement dated 27 August 2019 between the Government of Malta and Steward Malta Management Ltd and Steward Malta Assets Ltd and Steward Malta Ltd and BOV
- b. Agreement dated 17 July 2019 between Steward Malta Management Ltd and BOV and the Government of Malta - Amendment and Restatement Agreement
- c. Agreement dated 17 July 2019 between the Government of Malta and Steward Malta Management Limited, Steward Malta Assets Ltd, Steward Malta Ltd and BOV
- d. Agreement dated 22 June 2018 between Steward Malta Management Ltd and BOV and Government of Malta - Security of Title Transfer Agreement
- e. Agreement dated 22 June 2018 between the Government of Malta and Steward Malta Management Ltd and Steward Malta Assets Ltd and Steward Malta Ltd and BOV - Direct Agreement
- f. Agreement dated 13 November 2018 between the Government of Malta, Steward Malta Management Ltd and Steward Malta Assets Ltd, Steward Malta Ltd and BOV- Amendment and Restatement Agreement
- g. Agreement dated 13 November 2018 between Steward Malta Management Ltd and BOV and the Government of Malta - Amendment and Restatement Agreement

- 41. Having heard the testimony of **Dr Chris Fearne**, Minister for Health, given on 1 March 2021.
- 42. Having heard the testimony of **Marthese Debono**, representative of the Planning Authority, given on 12 April 2021 and on 16 June 2021, and having seen the documentation she presented.
- 43. Having regard that on 6 June 2021, the applicant declared that he had no other evidence to present.

44. Having regard to the affidavit of **Engineer James Grima**, Director of Facilities Management at Gozo General Hospital, St Luke's Hospital and Karin Grech Hospital, presented on 24 September 2021, and having seen the document he presented, that is, a photo report of the works carried out from 2016 until 2021.
45. Having regard that on 16 November 2021, the applicant requested that instead of the name Vitals Global Healthcare Assets Limited, there would be the name of Steward Malta Assets Limited, instead of the name Vitals Global Healthcare Ltd there would be the name Steward Malta Ltd and instead of the company Vitals Global Healthcare Management Ltd there would be the name Steward Malta Management Ltd, whereby this demand was admitted on that same day and corrections were ordered.
46. Having regard that on 16 November 2021, the three Steward companies declared that they had no other evidence to present.
47. Having regard that on 16 November 2021, the applicant requested that the Court takes into consideration a declaration publicly made by the company Steward in the proceedings with Application No. 93/2021 RGM in the names '**Steward Malta Ltd, Steward Malta Assets Ltd and Steward Malta Management Ltd vs Medical Associates of Northern Virginia Inc Profit Sharing Plan**', presented on 3 February 2021, whereby this demand was not opposed by the same company Steward.
48. Having regard that on 16 November 2021, the Court authorised the applicant to present a copy of the application initiating proceedings, as requested by the applicant himself.
49. Having regard that on 17 November 2021, the applicant presented a copy of the application initiating proceedings in the cause 93/2021 RGM.
50. Having regard to the affidavit of Architect Joseph Attard, as Chief Executive of INDIS Malta Limited, presented on 10 December 2021.
51. Having regard that on 20 December 2021, the applicant presented a copy of the Auditor General's Report dated December 2021, entitled '**An Audit of Matters relating to the concession awarded to Vitals Global Healthcare by Government – Part 2 - A Review of the Contractual Framework**'.
52. Having regard to the affidavit of **Robert Vella**, Chief Executive of the Lands Authority, presented on 23 December 2021. (fol 2766)
53. Having regard to the affidavit of **Dr Marisa Grech**, Acting Chief Officer of the Contracts Section at the Lands Authority, presented on 23 December 2021. (fol 2767)
54. Having heard the testimony of **Mario Grech**, given on 15 March 2022, as Chairman of Malta Industrial Parks Limited, as it was named at the time, when he was given the contract that is the subject of this cause to the company Vitals, and having seen the documentation presented by the company INDIS Malta Ltd, formerly Malta Industrial Parks Limited, that is '**Report on the characteristics of what constitutes an offer of land for an Industrial project under the Disposal of Government Land Act**' drafted by RSM Malta and dated 21 March 2016. (fol 2791)
55. Having heard the testimony of **Peter Mamo**, given on 15 March 2022, as Director of

Lands at the time when he was given the contract that is the subject of this cause, and having seen the documentation he presented, that is, the demands of the respondent company INDIS Limited, at the time Malta Industrial Parks Limited, in order that the lands of Gozo General Hospital and of St Luke's and Karin Grech would revert to them from the Government, whereby these demands were made on 16 March 2015 and 6 April 2015.

56. Having heard the testimony of William Wait in the cross-examination that was conducted on 15 March 2022.
57. Having heard the testimony of Adrian Said in the cross-examination that was conducted on 15 March 2022.
58. Having heard the testimony of James Camenzuli in the cross-examination that was conducted on 15 March 2022.
59. Having heard the testimony of Robert Borg in the cross-examination that was conducted on 15 March 2022.
60. Having heard the testimony of Dr Adrian Delia in the cross-examination that was conducted on 15 March 2022.
61. Having regard that the company INDIS Limited, on 15 March 2022, declared that it had no further evidence to present.
62. Having regard that the Lands Authority, on 15 March 2022, declared that it had no further evidence to present.
63. Having seen the note with the documents presented by the Honourable Prime Minister and the Attorney General, which were the following:
 1. Document AG1 - Copy of the Disposal of Government Land Act (Chapter 268 of the Laws of Malta) which was repealed as explained in Article 84 of Act No. XVII of 2017;
 2. Document AG2 - Copy of the Commissioner of Land Ordinance (Chapter 169 of the Laws of Malta) which was repealed as explained in Article 84 of Act No. XVII of 2017;
 3. Document AG3 - Copy of the Appointment of Competent Authority (Commissioner of Land Ordinance) Regulations, 2004 - L.N. 360 of 2004;
 4. Document AG4 - Copy of the Transfer of Rights and Responsibilities (Commissioner of Land Ordinance) Regulations, 2004 - L.N. 361 of 2004;
 5. Document AG5 - Copy of the Commissioner of Land (Transfer of Rights and Liabilities) (No. 4) Order, 2016 - L.N. 94 of 2016;
 6. Document AG6 - Copy of the Commissioner of Land (Transfer of Rights and Liabilities) (No. 4) (Amendment) Order, 2016 - L.N. 95 of 2016;

7. Document AG7 - A true copy of a public deed in the records of Notary Dr Tania Spiteri, to which reference is made in paragraph 2 of L.N. 95 of 2016 that substituted paragraph 4(1) of L.N. 94 of 2015;
 8. Document AG8 - A true copy of a public deed in the records of Notary Dr Tania Spiteri, to which reference is made in paragraph 2 of L.N. 95 of 2016 that substituted paragraph 4(b) of L.N. 94 of 2015;
 9. Document AG9 - Government Notice Number 61 of 2015 as taken from an extract of the Government Gazette of 23 January 2015;
 10. Document AG10 - Government Notice Number 1258 of 2014 as taken from an extract of the Government Gazette of 12 December 2014;
 11. Document AG11 - Research results of the public registry notes registered in the Public Registry, in the name of the company with Registration number 'C70625', that originally bore the name of 'Vitals Global Healthcare Assets Limited' and thereafter its name was changed to read 'Steward Malta Assets Limited'.
64. Having regard that on 31 May 2022, the Honourable Prime Minister and the Attorney General declared that they had no other evidence to present.
 65. Having regard that on 31 May 2022, the parties agreed to consign the cause for the final submissions in writing.
 66. Having regard to the submissions note in writing of the applicant Dr Adrian Delia presented on 29 July 2022.
 67. Having regard to the submissions note of the respondent Chief Executive of the Lands Authority and the Chairman of the Board of Governors of the Lands Authority, presented on 7 October 2022.
 68. Having regard to the submissions note in writing of the Honourable Prime Minister and the Attorney General, presented on 7 October 2022.
 69. Having regard to the submissions note in writing of the respondent companies Steward Malta Assets Ltd, Steward Malta Management Limited and Steward Malta Limited, presented on 7 October 2022.
 70. Having regard to the submissions note in writing of the respondent company INDIS Malta Ltd, formerly Malta Industrial Parks Limited, presented on 7 October 2022.
 71. Having heard the oral deliberations of the competent defence counsel conducted on 25 October 2022, after which, the cause was consigned to judgement.

Merits of the Cause

72. It transpires that by means of a temporary emphyteutical contract of 22 March 2016, in the records of Notary Thomas Vella, between, on the one part, Malta Industrial Parks Limited, and the Commissioner of Land, representing the Government of Malta, and on the other part, Vitals Global Healthcare Assets Limited, a number of sites in

Malta and Gozo, that is, the site of St Luke’s Hospital, the site of Karin Grech Hospital, as well as the site of Gozo General Hospital, were transferred by title of temporary emphyteutical concession for a renewable period of thirty (30) years.

73. Having regard that the applicant contends that the companies Vitals Global Healthcare Assets Limited, Vitals Global Healthcare Limited and Vitals Global Healthcare Management Limited, failed to comply with the contractual obligations that they assumed.
74. It transpires therefore that as a Member of the House of Representatives, he requested that the emphyteutical concession be cancelled and annulled.
75. It transpires that the respondents objected to these demands whereby they pleaded, in brief, the following defence:
 - a. Most of them pleaded that they were not the legitimate opposing party;
 - b. All of them pleaded that Article 33 of Cap. 573, that gives the right to the applicant as a Member of Parliament to take such action, does not apply in this cause;
 - c. The Vitals companies pleaded that there was no contractual shortcoming from their part.
76. It transpires that over forty-four (44) sittings, twenty-five (25) witnesses have been summoned and various documentations were presented which led to the cause proceedings having just over three thousand (3000) pages. It would be appropriate, at this stage, to provide a summary of the evidence presented before this Court.

EVIDENCE

I. **Dr Adrian Delia** (Vol II - fol 256-303)

77. In his affidavit presented on 26 April 2019, Dr Delia declared that on 27 March 2015, the Government issued a **Request for Proposals**, entitled “Services Concession for the Redevelopment, Maintenance, Management and Operation of the Sites at St Luke’s Hospital, Karin Grech Rehabilitation Hospital and Gozo General Hospital”, where any party interested in this project had to present their offer by 19 May 2015 together with a bid bond.
78. He declared that although there were three interested contenders, nevertheless due to the complexity of the Concession and the financial as well as the medical nature of the said Concession, that mandatorily required the involvement of foreign companies and extensive preparation, it was only the respondent company Vitals that eventually presented its offer in full.
79. It transpires, subsequently, that a few weeks later, in June 2015, the company Vitals was selected as the chosen bidder, and eventually, on 22 March 2016, the Emphyteutical Concession that is the subject of this cause was signed.

80. It transpires that in his affidavit, Dr Delia made the following chronological analysis regarding the unfolding of events prior to the signing of the agreement:

1. *In March 2014, Minister Konrad Mizzi was appointed Minister responsible for Health, instead of Minister Godfrey Farrugia;*
2. *On 9 October 2014, the company Pivot Holdings Ltd was registered where one of the owners was a certain Shaukat Ali Abdul Ghafour (Chaudry) (Passport Number KG 617268), a Pakistani citizen who has high and close connections with the Office of the Maltese Prime Minister;*
3. *That Pivot Holdings Ltd was registered at the same address in Cospicua Road, Paola where Bluestone Investment Malta Ltd is also registered, which is a parent company of VGH;*
4. *That Bluestone Investment Malta Ltd since its incorporation in 2014 to date, has never presented audited accounts as it is obliged to do according to Company Law;*
5. *That both Pivot Holdings Ltd and Bluestone Investment Malta Ltd are shareholders in Crossrange Holdings where Mark Pawley and Walajahi as directors;*
6. *The other owners of Pivot Holdings Ltd are Ali Shaukat Asad (with a Maltese Identity card and residing in Swieqi) and Walajahi, a Pakistani citizen.*
7. *That Ali Shaukat Asad and Shaukat Ali Abdul Ghafour (Chaudry) have the same residential address in Pakistan;*
8. *That on 10 October 2014, a secret Memorandum of Understanding was signed between this company, among others, Mark Pawley, and the Maltese Government represented by Minister Chris Cardona precisely regarding the privatisation of the three above-mentioned public hospitals and an emphyteutical concession that was to be given to this company by the Maltese Government some time AFTER; (underlining by this Court)*
9. *That on 23 November 2014, the investors Gupta, AGM Inc., Ram Tumuluri (through his company registered in the British Virgin Islands) and Mark Pawley (through Bluestone Investments also registered in the British Virgin Islands) signed another Memorandum of Understanding between them that included specific details of what was to be (and in fact, was) included in the Request for Proposals that Minister Konrad Mizzi published in March 2015;*
10. *That among other details, this Memorandum of Understanding between these investors of 23 November 2014 made reference to their goal that VGH*

would take charge of the management of Gozo General Hospital, with details mentioning the number of beds (e.g. 210 beds at the Gozo General Hospital), to build a 200-bed hospital in Guardamangia, to build a 200-bed assisted living facility in the same building, to build a medical college and to aim to also take charge of St Luke's Hospital. This secret MOU shows that these investors had agreed to take charge of Bluestone Investments Ltd.

11. That just 16 days after this Memorandum of Understanding between the investors, the company Bluestone Investments Malta Ltd (C 67975) was registered, with Ram Tumuluri and Mark Pawley as Directors. The owner of this company is Bluestone Special Situation 4 Ltd that is registered in the British Virgin Islands. On its part, moreover, this company in the BVI is the property of Asia Hasimau Investments Ltd that is also registered in the British Virgin Islands;
12. That Ali Shaukat acquired 33% of the shares in Pivot Holdings Ltd, in March 2015, that is the same month when Projects Malta, under the Ministerial direction of the Hon. Konrad Mizzi, Minister, issued a Request for Proposals (RfP);
13. That in February 2015, that is TWO MONTHS PRIOR to the issue of the Request for Proposals, VGH had already started advertising with details of what should be (and in fact, was) included in the RfP;
14. That during this period, the CEO of VGH, the American Armin Ernst, was concurrently employed by Steward Healthcare;
15. That on 20 March 2015, the journalist Daphne Caruana Galizia wrote in her blog that the Maltese Government had already (secretly) reached an agreement with Oxley Capital Group to manage the Gozo General Hospital and St Luke's Hospital even PRIOR to the issue of the Request for Proposals by the Ministry for Health. She revealed that in January 2015, Oxley Capital Group had sent Ram Tumuluri to the office of PricewaterhouseCoopers in Malta where he had made it clear that Oxley Capital Group already had an agreement with the Maltese Government regarding the Gozo Hospital and St Luke's;
16. In May 2015, Minister Konrad Mizzi confirmed that there were 3 investors who submitted a bid for the RfP: Vitalis Global Healthcare and Bluestone Investments (joint offer), Image Hospitals and BSP Investments Ltd. Daphne Caruana Galizia revealed that Vitalis and Bluestone Investments had the same two directors:- Ram Tumuluri and the CEO of Oxley Group, Mark Pawley;
17. In June 2015, Minister Konrad Mizzi confirmed that the Vitalis/Bluestone joint offer had won the bid. He confirmed that Vitalis (which by that date had become Vitals) was owned by Bluestones Investments, which is a fund that is managed and administered by Oxley Capital Group;

18. That in September 2015, the Maltese Government, through Minister Konrad Mizzi, agreed with VGH in order to initiate payments to them:

1. around €70 million per year (that is, €2.1 billion over 30 years);
2. The employees' salaries of the said three hospitals;
3. €1.2 million per year for a medical school in Gozo;
4. €1 million per year for the service of an air ambulance (for which there are witnesses who saw Ram Tumuluri use this helicopter often to travel between Malta and Gozo);

81. Dr Delia contends, in his affidavit, that in November 2016, the company Vitals appointed Armin Ernst, who is also the Chief Administrative Officer of Steward Medical Group, as its CEO, whereby he resigned from this position in October 2017 for personal reasons and, subsequently, he became the President of the company Steward Healthcare Group that eventually acquired the concession from Vitals as soon as they purchased the shares of the company Vitals some months later.

82. In regard to the merits of this cause, Dr Delia states that in the agreement, the respondent company Vitals had to:

1. Complete a new medical school for Barts in Gozo by 1 July 2017. This was not completed. Nor was it commenced, let alone completed;
2. 50 additional beds at Karin Grech and St Luke's Hospitals by 1 January 2017. This was not completed. Nor was it commenced, let alone completed;
3. 80 additional beds for rehabilitation at St Luke's Hospital by 30 September 2017. This was not completed. Nor was it commenced, let alone completed;

83. In regard to such obligations imposed on the company Vitals, he ensues to contend that:

57. That pursuant to clause 15.1 of the Services Concession Agreement that forms an integral part of the temporary emphyteutical concession and the reason why this temporary emphyteutical concession was granted pursuant to clause 4.3 of the said above-mentioned contract, the respondents Vitals Global Healthcare Limited and Vitals Global Healthcare Management Limited had the right to assign their obligations after the three (3) year period from the completion date that is from the date when the completion certificate that confirms that the completion milestones were reached, and that the works were completed, and these two above-mentioned companies as concessionaires could not transfer, assign, or in any other way, dispose of their shares and/or the shares of their subsidiaries.

58. That the three years stipulated by law have not yet passed since these agreements, let alone three years since the completion of the completion milestones associated with the completion of works on the sites as mentioned and listed above, nor have any penalties been paid according to

schedule number 6, page 124 of the Services Concession Agreement.

59. *That, consequently, according to the terms of the above-mentioned temporary emphyteutical concession, this share sale transfer to third parties and/or property transfer cannot be authorised because the completion milestones for the completion of works on the sites were not achieved according to the agreement reached through the temporary emphyteutical concession and the Services Concession Agreement signed between the respondents.*

84. In regard to the other respondents' position, summoned in this cause, apart from Vitals, Dr Delia contends as follows:

60. *That the Chief Executive of the Lands Authority and the Attorney General cannot approve this land transfer to third parties pursuant to Article 4.7 of the emphyteutical concession since the emphyteuta's obligations were not fulfilled according to the said contract.*

61. *That, in any event, the Chief Executive of the Lands Authority and the Attorney General have to ensure that the principles of the temporary emphyteutical concession and the conditions stipulated therein are therefore fulfilled as stipulated in the said emphyteutical concession contract which refers to this Service Concession Agreement and the Health Services Delivery Agreement and is an integral part of the said temporary emphyteutical concession.*

...

69. *That, therefore, since the House of Representatives approved the agreement according to the terms that had already been originally agreed, the respondents could never approve the share transfer to Steward Healthcare since these milestones, as established and as referred to above, were not achieved and executed by the said Vitals Global Healthcare Assets Limited.*

70. *That in the circumstances, the Lands Authority and the Board of Governors of the Lands Authority, on behalf of the Government of Malta as represented by the Prime Minister of Malta, had the obligation not to approve this transfer not only prior to the House of Representatives granting its consent for the change of conditions it had approved prior to the Related Instruments being tabled at the House of Representative on 19 October 2016, but they had the obligation to ensure that all that which had to be executed according to the milestones agreed in the Related Instruments not only with Vitals Global Healthcare Assets Limited but also with Vitals Global Healthcare Limited and Vitals Global Healthcare Management Limited was executed.*

71. *That since these milestones were not executed according to the said temporary emphyteutical contract and the Related Instruments that form an integral part of the temporary concession of 22 March 2016 in the records of Notary Dr Thomas Vella, this Honourable Court should cancel and annul this temporary emphyteutical concession because that which ought to be*

been executed was not done, to date there has been a void for the Maltese people, and therefore public property cannot be managed within a void with damages and costs paid for no reason to the shareholders of the said Vitals Global Healthcare Assets Limited, Vitals Global Healthcare Limited and Vitals Global Healthcare Management Limited to ensure that the people's property is administered properly without bonus pater familias in the interest of the collective and not in a manner which is harmful to the same people.

85. Lastly, in regard to the reason for his action, Dr Delia declares that:

72. *That I, as the people's representative, felt obliged to proceed with this cause in the interest of the people and of all that has been agreed on behalf of the people where whomsoever was obliged to manage and safeguard public property like the Honourable Prime Minister, the Attorney General and the Lands Authority and the Board of Governors of the same Lands Authority refrained from taking effective and profitable action to ensure that the agreed milestones would be achieved before transferring the shares to third parties with damages to the said people in payments of large millions that were needlessly paid to them.*

73. *That for this reason, I felt duty bound to table this cause as I have the right and obligation to do pursuant to Cap. 573 of the Laws of Malta that authorises the people's representatives elected to ensure, among other matters, that public property is administered and managed according to the principles of the contracts that the Lands Authority and the Board of Governors of the Lands Authority would have entered on behalf of the Government of Malta as represented by the Honourable Prime Minister and in this instance as well by Malta Industrial Parks Limited insofar as that which was approved by the House of Representatives, the highest institution in the country, would be executed and not abused against the same resolutions that grant authority to every Minister and/or authority that represents the Government of Malta to act within the parameters of that which was approved by the same House of Representatives and not beyond what was agreed and/or against what had been approved.*

74. *That therefore the share transfer to Steward Healthcare could not be carried out because the concession milestones that Vitals Global Healthcare Assets Limited agreed to undertake within three years from the agreement reached by the Maltese Government were not achieved and only a hole was dug out at Gozo Craig Hospital, a violation of the public property given to them.*

75. *That, therefore, I am requesting that this contract is cancelled, the property reverts to the Lands Authority and to the Board of Governors of the Lands Authority since Vitals Global Healthcare Assets Limited did not honour their obligations to date despite that they had committed to undertake this according to the law.*

76. *That were it true that I, as the people's representative, do not have the right and obligation to initiate this action for the safeguarding of public property pursuant to Cap. 573 of the Laws of Malta, it would mean that the opposing parties would be able to abuse of the powers granted to them by the House of Representatives without scrutiny during the execution of the said contracts.*

77. *That we were elected to ensure that public property is not abused, is well managed according to law and according to the terms of the agreement reached with the approval of the House of Representatives. If this is not undertaken, I would have failed in my duty to ensure that I would bring back to the Maltese people that which was taken and/or maladministered not in the interest of the collective but of some sectorial interests that go against the interest of the people.*

II. **Albert Gauci Cunningham** (Vol II - fol 278 to 303)

86. In his testimony, Mr Gauci Cunningham, as editor of the newspaper Illum, stated that from information forwarded to him, it transpired that medical equipment purchased with European Union funds was transferred to the company Vitals, despite that this company was responsible for the Hospitals' operations.

87. He stated that it was really strange how the Government was purchasing equipment for the Gozo Hospital when this Hospital had actually been given to the company Vitals by private concession.

III. **Ray Grillo** (Vol II - fol 313 to 471)

88. Mr Ray Grillo, as representative of the Clerk of the House of Representatives, presented the Court with copies signed by the Government and the company Vitals and that were placed at the House of Representatives, whereby however, these contracts, as he himself stated, were tabled at the House of Representatives with various parts redacted.

89. It transpires, on reading this documentation, that various parts of a commercial nature but of considerable relevance, both in regard to what the company Vitals was obliged to undertake, as well as for these proceedings, are not included in the contracts presented in the House of Representatives.

IV. **Warrant of Prohibitory Injunction 157/2018 in the names "Rattehalli Ashok vs Bluestone Investments Malta Limited et"** dated 29 January 2018 (Vol II – fol 498 to 533)

90. It transpires that on 29 January 2018, a Warrant of Prohibitory Injunction was presented by Ashok Rattehalli, who is a doctor representing a group of investors under the name AGMC Incorporated, against the Maltese company Bluestone Investments Malta Limited and the respondent company Vitals Global Healthcare Ltd, who was one of the investors that had agreed with the Government of Malta unbeknownst to

anyone through a Memorandum of Understanding of 10 October 2014.

91. It transpires that, in the Warrant of Prohibitory Injunction, Rattehalli was contending the following:

Whereas the applicant was one of the initial promoters of the group of persons/entities that, from a technical, administrative and financial aspect, together drafted an offer for the management and administration of a number of hospitals on the Maltese islands, as appears in the Memorandum of Understanding signed among this group on the twenty-third (23) of November two thousand and fourteen (2014), a copy of which is attached and marked as Doc. C and the Understanding and Promissory Note signed by the group on the seventh (7) of January two thousand and fifteen (2015), a copy of which is attached and marked as Doc. D;

Whereas the discussions regarding the offer formulation were concluded among this group, that was ready to prepare an offer, whereby this offer was managed by some members from this group under a company that had been purposely set up, that is, the respondent company Bluestone Investment Ltd (C 67975);

Whereas this call for offers for the management of several hospitals in Malta and Gozo, precisely St Luke’s Hospital, Karin Grech Hospital and Gozo General Hospital, was won by this group of person/entities; (emphasis by the Court)

Whereas as soon as it was awarded and granted the concession, as transpires from the attached document marked as Doc. B and as agreed, a company was set up under the name Vitals Global Healthcare Ltd, whereby this company was referred to as NewCo in the above-mentioned agreement marked as Doc. A, with registration number C 70546 and with registered address number forty-two (42), Ta’ Xbiex Seafront, Ta’ Xbiex, in order to run the management of the hospitals and execute the conceded project;

Whereas the respondent company is the sole shareholder of the company Vitals Global Healthcare Ltd and therefore has absolute control;

Whereas the applicant had entered into the above-mentioned agreement marked as Doc. A with the respondent company in order to serve as a member of the Medical Board as well as the Operating Management Team of this project, if the concession was won, as appears in clause two point one (2.1) of the said agreement;

Whereas in force of the said agreement, precisely clause three point one (3.1), the applicant was also to be given “an offer for the allotment of shares by the NewCo to Ashok in an amount of shares equivalent to five per cent (5%) of the shares in the NewCo on the day of entry into, and execution of the Concession Agreement”.

Whereas the company Vitals Global Healthcare Limited entered into a Health Services Delivery Agreement – Services Concession for the Provision of Healthcare and Ancillary Services and the Maintenance, Management and Operation of the Sites at St Luke’s Hospital, Karin Grech Rehabilitation Hospital and Gozo General Hospital on the thirtieth (30) of November two thousand and fifteen (2015);

Whereas the respondent company still recognised the rights and concerns of the applicant, who received a confirmation in writing of the preparation of the documentation “... in connection with your investment in Vitals Global Healthcare” as can be seen in the copy of the attached email marked as Doc. E;

Whereas despite the obligations assumed by the respondent company on the strength of the above-mentioned agreement marked Doc. A through the aforementioned clauses, as well as despite the promises made to him, the applicant was still not given the offer for the purchase and/or transfer of shares in the company Vitals Global Healthcare Ltd according to clause number three point one (3.1) of the agreement;

Whereas recently the applicant received information that the company Vitals Global Healthcare Ltd was to be sold to third parties and that therefore his rights shall continue to be prejudiced, this time irremediably since the respondent company would no longer be the majority shareholder of the company Vitals Global Healthcare Ltd and therefore would be unable to honour the obligations it assumed in view of the above-mentioned agreement marked Doc. A;

92. It transpires that in the documentation presented by Rattehalli in the Warrant of Prohibitory Injunction, there is a Memorandum of Understanding signed on **23 November 2014**, whereby this agreement was signed between Dr Ambrish Gupta on behalf of Medical Associates of Northern Virginia Inc. and a group of investors specified as AGMC Incorporated of Dr Ashok Rattehalli, Portpool Investments Limited, of Ram Tumuluri, and Bluestone Special Situation 4 Limited, of Mark Pawley, in which there was an agreement regarding the creation of a company and the division of costs and profits in a project, which was the following:

- **Takeover the existing 210 bed general hospital in Gozo, Malta and operate the hospital as per the terms agreed with the Government of Malta**
- *To build an additional 200 bed hospital in the same premises. Gozo General Hospital to be a total of 410 bed teaching hospital by the end of 2016.*
- *To build a 200-bed assisted living facility in the same premises.*
- *To build a medical college as per the standards of Barts and the London*

School of Medicine and Dentistry.

- **Potential acquisition of St Philips and/or St Luke's Hospital in Malta**

93. It transpires that as Financer, this agreement stipulated as follows:

- *Party A has agreed to invest \$300,000 into the venture in consideration for the equity participation in the Project;*
- *Party A will advance \$150,000 as soon as the MOU is executed;*
- *Party A will advance the rest of the \$150,000 right after visiting the Project in Malta (Visit is anticipated to be between 14th and 19th of Dec 2014);*
- *Party B will advance \$300,000 in January to cover the pre-project costs as per Appendix 1;*
- *In case for whatever reasons if Party A is not satisfied with the Project after the visit, Party A has no further obligation to invest the final \$150,000;*
- *In the event Party A is not satisfied with the Project after the visit to Malta, Party B agrees to pay back Party A, the first \$150,000 that was advanced. The pay back will be within 30 days of written notice from Party A.*

94. It transpires that this **Memorandum of Understanding** was signed **after** a Memorandum of Understanding had been signed on 10 November 2014 between the same parties with the Government represented by Dr Chris Cardona, and which appears reported in detail at para. 190 hereunder.

95. It transpires subsequently that on 12 May 2015, that is, after the issue of the Request for Proposals issued by the Government on 27 March 2015 and prior to the closure of the period when these proposals could be submitted, that is 19 May 2015, the company Bluestone Investments Malta Limited and Ashok Rattehalli entered into an agreement whereby they premised the following:

WHEREAS Ashok is an experienced healthcare professional and global executive with over twenty-five (25) years of corporate exposure and has successfully managed and implemented various global projects including, but not limited to, in the healthcare, education and management consulting sector;

WHEREAS the Company is involved in developing and managing various real estate development projects including, but not limited to, in the healthcare sector;

WHEREAS the Company is presently bidding for the granting of a services' concession for the redevelopment, maintenance, management, and operation of a number of healthcare sites in Malta, particularly St Luke's Hospital, Karin Grech Rehabilitation Hospital and Gozo General Hospital;

WHEREAS Ashok presently forms part of the medical team of the Company

which is supporting and assisting the Company in the bidding process for the granting of the aforementioned services' concession;

WHEREAS, in the event that the Government of Malta grants the aforementioned services concession to the Company and/or any Related Party of the Company, the Company is desirous to appoint Ashok on the Medical Board and the Operating Management Team (both defined herein) and to involve Ashok in the corporate structure of the Company;

WHEREAS the Parties are desirous to enter into this Agreement to regulate their professional relationship subject to the terms and conditions stipulated herein;

96. It transpires that in the agreement, reference is made to the company Vitals Global Healthcare Ltd as the company that shall be set up, and the following definitions of relevance to this cause are applied:

*1.1.3 “**Concession Agreements**” shall mean the concession agreement, and/or series of agreements, relating to the Project, to be entered into and executed by and between the Company and/or the NewCo and/or any Related Party, the Government of Malta and/or any Other party, as may be applicable, leading to the granting of the Services' Concession.*

...

*1.1.9 “**Project**” shall mean the entire project consisting inter alia of the construction, development, redevelopment, extension, maintenance, management, operation and setting up of the sites presently occupied by the 'Gozo General Hospital' in Gozo and 'St Luke's Hospital', including 'Karin Grech Rehabilitation Hospital', in Malta, and/or including, if and where applicable, any additional site/s and/or operation/s which may now or in the future form part of the Project.*

...

*1.1.11 “**Services' Concession**” shall mean the services' concession for the Project in respect of which the Government of Malta issued a request for proposals on the 27th March 2015.*

97. It transpires that the same Agreement refers to an agreement made previously between the parties which stipulates the following:

7.1 The Parties hereby declare and agree that any and all contracts (whether written or verbal) which could now or at any time prior to the date of this Agreement have existed between Ashok and the Company and/or the NewCo and/or any Related Party are hereby being terminated.

98. It transpires that, subsequently, this Warrant of Prohibitory Conjunction was withdrawn, as confirmed by Dr Peter Fenech, in his testimony given on 26 November

2019, after an agreement was reached between the parties that led to the transfer of shares and eventual company involvement by Steward.

V. **Dr Konrad Mizzi** (Vol III - fol 709 to 744)

99. Dr Mizzi, in his testimony given on 26 November 2019, on the day that he subsequently voluntarily resigned from his position of Minister, stated that, in 2014, he was appointed Minister for Energy, Health and Projects and for Projects Malta, a position that he held until around 2016, when he became Minister for Tourism whilst still holding the responsibility for Projects Malta, which was in charge of Public Private Partnerships.
100. He stated that whilst the Ministry that he led, that is, the one for Energy, Health and Projects, was responsible for all that was related to the Health sector, Projects Malta was responsible for the commercial aspect.
101. He maintained that, in the case of Vitals, Projects Malta had the Cabinet's mandate to lead the Private Public Partnership negotiations that were going to be reached on the privatisation of the Hospitals.
102. He explained that Projects Malta was responsible for appointing the negotiating and evaluation teams in connection to the contract and appointed various experts from several sectors.
103. He stated that the Government of the day wished to attract an internationally renowned Medical School and open a teaching hospital in Gozo. In fact, Malta Enterprise had entered into discussions with various investors and in the beginning of January 2015, had even made a presentation to the Ministry that he led. Nevertheless, Dr Mizzi stated that he wished that St Luke's, Karin Grech and also the Gozo Hospitals would be modernised and therefore he was not satisfied with this suggestion made by Malta Enterprise since it was too big for Gozo and he wanted that the hospitals in Malta would benefit too. It was for this reason that Malta Enterprise was requested to draw up a different Concept Paper, that this time would include the three hospitals.
104. When questioned regarding how long was the duration of the process to grant the contract after the issue of the Request for Proposals (RfP), he stated that the process was in line with the processes as regulated by the European Union, but he did not know exactly how long this took, and he was not in a position to say whether this contract was the biggest public private partnership agreement ever entered into by the Government of Malta.
105. In regard to an agreement, that is a Memorandum of Understanding done with Malta Enterprise in September 2014 by investors who eventually formed the company Vitals, Dr Mizzi maintained that he knew that there existed this Memorandum of Understanding, but he was unaware of its content, although he stated that after this agreement was signed, Malta Enterprise had made a presentation with a proposal for a project that was in line with the contents of the Memorandum.

106. In regard to the presentation given by Malta Enterprise, he stated that Ram Tumuluri was also present to give the presentation, whilst he maintained that he was clear with him and whomsoever was present on that day that if they did not fulfil the Government's requirements, nothing would go ahead.
107. He stated that he never revealed in advance the content of the Request for Proposals to Ram Tumuluri.
108. In regard to the due diligence of the company Vitals, Dr Mizzi stated that there was a team of Financial, Medical and Operational professionals who had to conduct their evaluations, and he personally was never involved in it, since he left it in the hands of the persons involved in procurement, negotiations and government to handle this.
109. Questioned in regard to the due diligence report published on Daphne Caruana Galizia's site and the allegations made therein that the company Vitals was not a trustworthy company, he maintained that the Government ensured to engage a board to conduct its audits and due diligence reports, and what was reported therein is not true.
110. In regard to the company Vitals, he insisted that it was not a sham company, as was specified to him through the questions being put to him, but he was certain that, although it had its problems, in the years to come, it would be very successful.
111. In regard the works to be undertaken by Vitals, he stated that at the Gozo Hospital, there were some problems, because the plan was that the works could be carried out through a Development Notification Order but, subsequently, following strong opposition that was raised, a full application had to be submitted to the Planning Authority, whereby this application took its time and therefore the project's execution took longer.
112. In regard to the company Vitals' experience, Dr Mizzi maintained that he proceeded on the advice of experts that he engaged, whilst he stated that the same company Vitals presented itself as a company that had partners with sound medical experience.
113. In his additional testimony given on 8 February 2021 (Vol VI - fol 1472 to 1525), whilst this time he refused to answer questions made to him since he maintained that there was a magisterial inquiry regarding the contract that is the subject of this cause, he opted to read a Statement which he prepared, that read as follows:

In January 2015, as Minister responsible for Health and together with the Parliamentary Secretary for Health at the time, we attended a meeting organised by the office of the Prime Minister and by Malta Enterprise regarding a proposal from investors who were in contact with Malta Enterprise in regard to the medical facility that was required for Barts Medical School.

The attendance to this presentation was the first involvement by my Ministry.

This proposal concerned the Gozo Hospital ... Gozo General Hospital but we immediately felt that this did not match with the Government's broader vision.

This is being said in the context of the bad condition of several medical facilities that we had inherited in 2013. The Prime Minister of the time gave me instructions for the Gozo hospital to be redeveloped, to build the facility for Bart's and to find new investment in Health and in Health Tourism through a competitive process.

I learnt that previously the Government had signed an MoU with these investors and this Memorandum of Understanding in the meantime ... Had expired. The Ministry that I led was not involved in that process. Never. I have been informed that Malta Enterprise advised the investors that their proposal did not match the Government's plans.

Meanwhile, the Government considered the needs in the health sector and the project was no longer considered as a direct investment project as is usually dealt with by Malta Enterprise, but as a public concession that would include additional facilities and services.

Whilst at the time concessions did not fall under the Public Procurement regulations, the Government still wanted there to be a public call and competition. In March 2015, the Government of the time decided to issue a call for proposals ... RfP for a concession that included the development of the medical facilities in Malta and in Gozo too. Besides passing regulations that gave the right to appeal the eventual decision of the selection of that project.

The project was announced publicly by the Prime Minister and at the time it was positively welcomed by the country, including the Nationalist Opposition. When it was announced, the Parliamentary Secretary and I explained the process that was being undertaken and the RfP ... Request for Proposals was published on 27 March 2015.

There were three offers for this call. Thereafter, the public selection process took place and it was recommended that the bidder ... ehm ... the preferred bidder was recommended by the Selection Board, whereby this recommendation was approved by the Cabinet of Ministers. The negotiation process ensued under the structural direction within the Public Service.

I have to say that the Cabinet of Ministers had approved the project and was regularly updated in detail of the developments, the outcome of the negotiations and the ongoing works on the project during the months and years, both during the VGH times and later with the involvement of Steward.

I must say that the Cabinet gave at least four ... gave at least fourteen approvals ... approvals ... fourteen (14) approvals for the phases and aspects

of the whole process, after the relative updates had been presented and following a full discussion. This was besides the briefings that were held regularly, that is, besides the fourteen (14) approvals, the Cabinet was also updated regularly.

Whilst these Cabinet matters are also privileged, I can confirm that my Ministerial colleagues who were present participated and approved.

Thank you.

114. He maintained that on his part there was absolutely no wrongdoing and once a magisterial inquiry had been initiated, he wanted to protect his rights by not answering anything further. Therefore, during the whole sitting, he opted not to testify in order not to incriminate himself.

VI. **Dr Martin Balzan** (Vol III - fol 745 to 755)

115. Dr Martin Balzan, in his testimony of 26 November 2019, as **President of the Medical Association of Malta** involved in its management since 2001, maintained that although the doctors were promised that there was going to be an investment of two hundred million for a new Hospital in Gozo, as well as the renovation of St Luke's Hospital and Karin Grech, all for the service of the patients, absolutely nothing had been done until now, except for the opening of the Barts Medical School, which is a private entity and does not offer any services to the public, and some other small works.
116. He also stated, from public documentation held by the Association and published in the Government's Budget, it transpires that whilst in 2015, the Government expenditure in the Hospital was around thirty-five (35) million Euro, in 2020, the expenditure was now going to rise to around ninety (90) million Euro. He also maintained that the Government was paying Vitals company the sum of around fifty (50) million per year.
117. He maintained that it was clear that, whilst the Government was paying its part, Vitals company, that was in the private public partnership, that party that had to disburse the money for the investments, still had not paid absolutely anything.
118. He insisted that in the three above-mentioned hospitals, that is, St Luke's Karin Grech and Gozo, the work that Vitals company was obliged to undertake in the pre-established period, had not been executed.
119. Dr Balzan referred to the estimates published by the Government in the Budget where it transpired that Vitals company, between 2016 and 2020, had been paid the following payments:

2016 -	€16,022,411
2017 -	€33,555,560
2018 -	€26,783,732
2019 -	€44,500,000
2020 -	€50,624,000

120. He also revealed that these amounts do not include the money that the Government paid in salaries, hospital and rehab operations, which, between 2016 to 2020 were the following:

Year	Salaries	Operation	Rehab
2016	24,907,000	2,903,000	13,999,697
2017	25,237,000	nil	10,999,997
2018	23,609,000	nil	10,400,002
2019	27,269,600	nil	12,000,000
2020	27,779,000	nil	12,290,000

121. Dr Balzan insisted that, for all those payments that the Government was making to Vitals company, Vitals company to that date had still not made any serious investment in the three hospitals, even though it was obliged to do this within a stipulated period.

122. He stated that the Association's concern was such that it was obliged to make its voice publicly heard and even testify before this Court, in these proceedings.

VII. **James Camenzuli** (Vol IV - fol 777 to 786)

123. Mr James Camenzuli, as Executive Chairman of Projects Malta Limited when the project was being discussed, in his testimony of 27 January 2020, whilst he presented a copy of the **Procurement Evaluation Report** mentioned by Dr Konrad Mizzi, dated 19 June 2015, stated that at the time when Projects Malta was involved in the Hospitals project, the Executive Chairperson was Mr William Wait, whilst he held the position of CEO of the **Foundation for Medical Services**.

124. Mr Camenzuli stated that a couple of months prior to drawing up the Evaluation Report, the Foundation for Medical Services was requested by Projects Malta to evaluate the proposals that they had received after the Request for Proposals had been published for "Services Concession for the Redevelopment, Maintenance, Management and Operation of the Sites at St Luke's Hospital, Karin Grech Rehabilitation Hospital and Gozo General Hospital on 27 March 2015.

125. He stated that the **Evaluation and Adjudication Committee** consisted of himself, as Chairman, together with two other Members, that is, Mr Robert Borg and Mr Manuel Castagna.

126. The Court considers that, considering the national importance that such a project had and the repercussions on the citizens that such a contract had, it would be appropriate if parts of the Evaluation Report were quoted in order that they would be in the

public domain, as was rightful, despite the objections expressed by the respondent Prime Minister and the Attorney General when these were presented to the Court.

127. It transpires that the tender deadline was 19 May 2015 and until that date, three bids were presented, that is, from:

- Vitals Global Healthcare Limited
- Image Hospitals
- BSP Investments Limited

128. As established in the report,

PM (Projects Malta) on behalf of Government had invited Bidders to submit detailed proposals in accordance with the requirements of the RfP which were required to provide evidence, amongst other things, of the Bidders' technical competence, fitness and probity, operational and infrastructural experience, financial soundness, robust business plan and an economically advantageous offer for the conclusion of the Concession Agreement.

129. It transpires that, whilst the Proposal of Vitals Global Healthcare Limited included a bid bond of half a million Euro, the proposals of two other bidders did not have a bid bond, and therefore only the Vitals' bid continued to be considered.

130. It transpires that Mr Charles Grixti was engaged to draw his conclusions regarding the technical evaluation whilst Robert Borg and Manuel Castagna, members of the same Board, were engaged to conduct its financial evaluations.

131. It transpires that, in their technical evaluation, the Board reached the following conclusions: (Dok JC1 – fol 787)

The Evaluation and Adjudication Committee noted that the VGH Bid Submission is a detailed submission, which presents a true and detailed picture of healthcare in Malta and Gozo at present. Their Bid Submission is based on the present inefficiencies of the service and how to improve it. The way the services in Gozo are being proposed aims to make the new facilities an independent healthcare service provider with a modern set-up and all the support services to run independently of Mater Dei Hospital (“MDH”). A Trauma Centre is included together with a trained Trauma Team and a modern ambulatory service. It will also include and ICU and a CCU. An Air Ambulance is also being proposed. A large Hyperbaric Chamber is proposed to be built by VGH to allow more than one patient being treated at any one time. Most of the services being offered at MDH have been included in the bid for GGH. The number of Medical Tourism beds makes such a service viable for Gozo. The emphasis for a Medical Tourism service lies with Cardiology and Vascular Surgery, Orthopaedics, Trauma, Orthotics and Prosthetics.

VGH proposes to maintain high quality standards consistent with facilities in other European countries. VGH plans to work with Specialists from several fields all over the Globe e.g., Physicians, Surgeons, Physical

Therapists, nurses and operating room personnel.

In terms of the VGH proposal, Gozo will have all the facilities of an acute hospital supported by the investigative services - radiology, including CT scan, MRI scan, U/S scan, Interventional Radiography (Angiography), Breast Imaging and Biopsy, PET scan, BMD scan etc. VGH propose to liaise with Barts Medical School for Research and Development, Clinical Research and participation in Clinical Trials.

VGH propose to introduce a Hospital Management System that includes Electronic Medical Records and HR modules. They propose that SLH will base its function on Rehabilitation, a Trauma Unit, and 3 surgery theatres and Medical Tourism. Orthotic and Prosthetic services are to be set up at SLH. The proposal to build 12 Dermatology beds and Clinics is included.

VGH proposes to create a Nursing University as per RfP requirement. Even at SLH Medical Tourism will be based on Orthopaedics, Cardiology and Vascular Surgery Trauma.

VGH proposes to upgrade KGRH and to enhance geriatric rehabilitation techniques using the Acute Geriatric Care (AGC) model.

Medical equipment proposed appears adequate and advanced and VGH have proposed that such equipment will be leased rather than purchased outright.

The Evaluation and Adjudication Committee also noted that VGH are well-prepared to commence immediate execution of the project and have the required skill sets and relationships with third parties who will assist in implement the project already in place. For this project, VGH has entered into a formal agreement with the Medical Associates of Northern Virginia Inc. (MANV), which is a group practice incorporated in 1985 for the practice of Medicine and Surgery. MANV with its network of physicians and wealth of knowledge in medical and clinic areas, will provide the management, support and guidance for the project.

In order to ensure that the operations of GGH, SLH and KGRH enjoy the best-in-class expertise and global reputation, VGH envisage a specific partnership with Walter Reed's Medical Centre Orthotics and Prosthetics, a world-renowned rehabilitation services facility based in the US.

VGH have submitted that the construction team will be led by Shapoorji Pallanji, which is reportedly one of the largest construction and construction management companies in the world. Shapoorji Pallanji boasts a division which has constructed approximately 13,000 healthcare beds worldwide, with 27 major healthcare projects completed. The architectural and engineering team will also be comprised of firms with both local and international stature. The bidder has submitted that Heery Design, a division of Balfour Beatty, has completed preliminary conceptual design studies for both sites and will continue with local design architects for the schedule of accommodation requirements for all sites.

VHS shall partner with Specialised Engineering Solutions who shall assess both sites for engineering requirements, and will develop design solutions which will minimize energy use while maximizing operational reliability. Siemens and GE Healthcare shall provide the medical equipment, whilst Utile Technologies shall provide the electronic health records/electronic records system for the hospitals.

The Evaluation and Adjudication Committee, basing itself on the expertise and advice of its technical consultant on healthcare, deems the Bid Submission of VGH as technically compliant.

132. It transpires that in regard to the qualitative aspect of the proposal, the Committee noted the following:

VGH's proposal states that VGH is a wholly-owned subsidiary of Bluestone Investments Malta Limited, which in turn is owned by Bluestone Special Situation 4 Limited, a private equity fund based in Singapore and managed by the Oxley Group. Oxley Global Limited is an investment holding company with ownership of a diversified business group focused principally on the Asia Pacific Region, with operations that span various industries, particularly in Health Care and Aged Care.

The shareholders of VGH aims to inject an additional €41 million to the present share capital, representing 22% of the total project cost once the concession agreement is finalised.

133. The Committee, nevertheless, felt that, in regard to the financial proposal as drafted, it had to point out the following:

*The bidder did not clearly show the impact of the project's operations without the government bed revenues, however it did state that the project is not viable without medical tourism. The sensitivity analysis indicated in the business plan outlines a sensitivity wherein income from medical tourism is removed such that the only source of income from the project is derived from Government, whilst all costs for the project are retained. On this basis, the resultant annual cash flows, pre-tax and funding are negative through the service concession period of 30 years. **This implies the non-sustainability of the project should operating activities in relation to medical tourism be disregarded.** Based on the financial report, the medical tourism income as a percentage of total income started at 13% and increased over time to 43% over the concession period.*

134. That is, the Committee had already noted that if the concept of medical tourism failed, the whole project as proposed would fail.

135. In regard to the expenditure that Vitals proposed that it would spend, the Committee said the following:

The total projected capital spend including interest on the capital is €179 million (€170 million capital spend plus performance bond on in the initial years of €9 million), 70% will be funded through a bank loan

(€125 million), 22% through an equity injection (€41 million), 6% through a separate financing agreement intended to finance the acquisition of the helicopter (€10 million) and the remaining 1% from operations.

The bidder has shown that it has lined up the debt financing that is needed for the project.

136. Lastly, taking into account all the considerations made, on the basis of the Mr Grixti's Technical report and Robert Borg and Max Castagna's Financial Report, the Committee concluded that:

The Evaluation and Adjudication Committee recommends the granting of the preferred bidder status to Vitals Global Healthcare Limited on the basis that the information presented in their offer satisfies the administrative, technical and financial requirements of the RfP.

137. James Camenzuli stated that, as soon as they completed their report on 19 June 2015, they had forwarded it to Projects Malta, whereby these accepted it as it was and proceeded with the contracts.
138. In his additional testimony given on 3 July 2020 (Vol III - fol 796 to 834) James Camenzuli stated that he was no longer involved with Projects Malta, and therefore, he was not in a position to present other documentation.
139. He also stated that the bidder's Due Diligence was not in the remit of the Evaluation Committee and therefore no Due Diligence was conducted of Vitals company. He insisted that in the Request for Proposal, no reference was made to Due Diligence, and therefore this was never evaluated and/or considered by the Evaluation Committee.
140. He stated however that Vitals company presented a lot of banking documentation that was very detailed to show that there was financial backing for the Vitals project, where it appeared clear that there was commitment where the Bank of India was financing a substantial part of the project whilst other financing was being put up by the Oxley Group, Parent company to Vitals company. The Committee, however, never conducted checks with such financiers regarding the veracity of the declarations of Vitals company, and relied only on the documentation.
141. He insisted that when they conducted the evaluation, the issue of a bank guarantee that the Maltese Government had to subsequently to the amount of three hundred and sixty million, is not mentioned at all.
142. He maintained that they had no request to investigate and evaluate the persons or companies involved in the proposal and they only had to rely on the documentation that was provided to them, which, according to the Committee, was extensive and sufficient.
143. He stated that he had no indication that Ram Tumuluri was declared bankrupt in Canada in 2012 after he had a massage centre business, and he learnt of this much

later, through the local newspapers, after the contract had already been awarded.

144. He maintained that the Committee was set up by Projects Malta and they called it the Evaluation and Adjudication Committee, but their work consisted only in the evaluation of the documentation that they were given, whilst insisting that the final decision was taken by Projects Malta, and not by them, although the Committee's name indicated otherwise.
145. Questioned whether they were concerned regarding the fact that, although the bid was submitted on 19 May 2015, that is, six days after the company Vitals Global Healthcare Limited was formed, he stated that since this was a consortium, there was nothing to be concerned about.
146. In the cross-examination given on 15 March 2022 (Vol XI - fol 2819 to 2824), he confirmed that he was the Chairman of the Evaluation and Adjudication Committee that drafted the Evaluation Report on the basis of which the final agreement was reached.

VIII. **Manuel Castagna** (Vol IV - fol 835 to 882)

147. In his additional testimony given on 3 July 2020, Manuel Castagna stated that he is an Auditor, partner of the auditing firm Nexia BT, and had been appointed on the Evaluation and Adjudication Committee by Projects Malta.
148. He stated that despite that it appeared that Vitals company only had €1,200 as shared capital, he had no issued with that fact, despite that an investment of around one hundred and eighty-seven million Euro was to be made, since he maintained that from the documentation, it appeared that they had financing for everything, through the letters of comfort – the committee had felt that such letters of comfort had to be considered as sufficient despite that, in their nature, letters of comfort are not a direct Bank's commitment, but solely an indication that they would be ready to provide such a commitment.
149. He maintained that, according to the RfP issued by Projects Malta, there was no obligation on the bidder to provide more reliable bank assurances and the letters of comfort were sufficient.
150. He insisted that, although the Committee had reached its conclusions, both Projects Malta as well as the Government of Malta had every right to change the terms of the final agreement, because the Government had the right to negotiate as they wished, and therefore he denied categorically that, in any way, it was the Committee that led the Government to agree with Vitals.
151. He stated that no reference was ever made that the Government would have had to provide a guarantee of three hundred and sixty million Euro, as was being stated that in fact occurred a few months after the contract was signed.
152. Castagna said that one of the most important matters that transpires was that the

project was viable with the medical tourism project that was being planned by Vitals company.

153. He also confirmed that no Due Diligence was conducted on the company or the persons that formed such companies, such as Ram Tumuluri.
154. He maintained that, prior to the Government entered into an agreement with Vitals company, both financial as well as Due Diligence ought to have been performed, but he insisted that this was not in the Committee's remit of which he was part, and it was something that should have been performed by the Government, not them.
155. In regard to the Vitals bid, he stated that this was the only bid that could be considered since the two bidders had not filed the necessary guarantees with their application and therefore, they could not even be considered.
156. Questioned whether the Committee was reassured that the project was going to be managed by Vitals company, he maintained that the bid showed that Vitals company, together with other experts, would be leading the project.
157. He confirmed that in their evaluation, they relied only on the documentation produced, and they conducted no further detailed inquiries regarding the hospitals and other projects in which Vitals was involved – this was not included in their remit from Projects Malta.
158. He insisted that he was reassured that, *“at any stage, if the agreement was not adhered to, the Government not only could withdraw the performance guarantee (of nine million Euro), but also cancel the whole contract even after it would have commenced”* (fol 877). He continued to say that *“if something were to go wrong, whoever was monitoring, yes ... they ought to take actions”*.
159. In his additional testimony given on 23 September 2020 (Vol V - fol 1054 to 1081), Manuel Castagna presented the **Request for Proposals (RfP)** that was published by the Government on 27 March 2015 (Vol V - fol 1082 to 1102) whilst he stated that he had no other documentation since these were in the possession of Projects Malta.
160. He confirmed that they had not seen any Memorandum of Understanding that had been done previously, regarding which he knew nothing.
161. He maintained that, as part of the Committee's tasks, in regard to the General Financial Standing and Sounding of the Bidder, as mentioned in the RfP, letters of comfort on the part of the investors could be considered as sufficient at the time and sanction letters on the part of the investors were not required, whilst he insisted that he proceeded on the basis of the instructions given in the RfP.
162. He insisted that, at the time when they were evaluating Vitals company's bid, the bid was described as credible and feasible and was coupled with financial assurances that appeared credible.

163. He stated however that he did not know what happened after they filed their report, and therefore he could not understand what led to the project to be in the state that it is today.
164. In regard to the Due Diligence, faced with the Auditor General's conclusions, he insisted that the Committee's mandate was not to perform Due Diligence since this was not mentioned in the RfP. He insisted that the Due Diligence had to be performed at a more advanced stage since the Committee's task was solely to evaluate the report and present a preferred bidder with the Government, whereby the Government then had to conduct its checks and negotiations prior to finalisation.

IX. The Auditor General Charles Deguara (Vol IV - fol 924 to 932)

165. In his testimony given on 23 September 2020, the Auditor General Charles Deguara informed the Court that on 21 November 2016, the Union Haddiema Magħqudin together with the Medical Association of Malta had requested the Public Accounts Committee to investigate the award of the contract to Vitals, the subject of this cause, and therefore the Office of the Auditor General, led by him, proceeded to investigate the complaint.
 166. On 7 July 2020, he presented the first of three planned reports, that is, the report entitled '**An Audit of Matters relating to the concession awarded to Vitals Global Healthcare by Government – Part 1: A review of the tender process.**' (Vol IV - fol 933 to 1042)
 167. Some time after the publication of the report, in view of the conclusions he made where he stated that there was documentation that was being held back from him, the Office of the Prime Minister passed on to him a **Memorandum of Understanding** dated 10 October 2014 that, until his first report was published, had not been given to the Auditor General, despite that he had requested it after the existence of such an agreement had been mentioned to him. As a result, he proceeded to publish another report, entitled **Addendum**. (Vol IV - fol 1043 to 1053)
 168. It transpires that, in his first report, presented on 7 July 2020, the Auditor General provides a detailed and thorough study of the whole procedure that eventually led to the award of the contract to Vitals company.
 169. In a report of not less than two hundred and twenty (220) pages¹, not possibly reducible in this cause, but easily accessible on the official site of the Office of the Auditor General², the Auditor General conducts a thorough examination of the whole chronological process, from March 2013 until 27 October 2015, the date when the Cabinet authorised the Minister for Health of the time to sign the final agreement with Vitals company, and reach the conclusion that there were several issues that he could note in the whole process that raised serious concerns regarding the correctness of the whole procedure employed and that led to the final contract granted to Vitals company.
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¹ <https://nao.gov.mt/loadfile/a8c1d387-3a0d-4eac-ad91-7781cf87ebda>

² <https://nao.gov.mt/en/recent-publications>

170. Among the numerous observations and conclusions made by the Attorney General in his First Report, it would be appropriate to reproduce parts of it, with emphasis by this Court, that shows the thinking of the Auditor General, that this Court also takes on as its own:

4. *The first term of reference entailed the review of the method utilised for the award of the concession to the VGH. Drawing the Office's immediate concern in this regard was the Agreement that Government reportedly entered into prior to the RfP with a subset of the investors of the VGH. **The overlap between this Agreement and the concession was clear and created major doubt and concern regarding the integrity of the eventual concession.** The NAO's concerns are heightened in light of Government's reluctance to provide this Office with a copy of the Agreement, which failure serves as further confirmation of its contentious relation to the concession eventually entered into by Government with the VGH. This casts a dark shadow on the validity of the concession awarded by Government, **for in effect, all appears to have been predetermined to ensure an already agreed outcome.***

5. *In terms of the identification of needs, Government failed to appropriately explain the bases of the inclusion of the GGH, the SLH and the KGRH as part of one project. No specific assessment of whether the grouping of these three public hospitals presented any benefit to Government was undertaken, with their amalgamation under one project an inexplicable uncontested given. **Confounding matters was that the MEH-Health was not meaningfully involved in the determination of Government's requirements relating to this concession and in the establishment of feasibility thereof.** Instead, the process that was in essence a health services concession was driven by the MEH-Energy. **Of concern was that the MEH-Energy also failed to involve MFIN despite the substantial disbursement in public funds that this concession was to entail. Of even greater concern to this Office was the fact that Cabinet was not appropriately informed of the project prior to the issue of the RfP.***

6. *Aside from concerns relating to the integrity of the commissioned feasibility report, the NAO's overall opinion of this report was that it constituted a preliminary and superficial analysis of the possible concession of three of Malta's public hospitals. The feasibility report was bereft of any form of independent analysis or critical thought. Further concerns relating to the integrity of this process emerged from the review of the minutes of the Projects Malta Ltd Board of Directors, wherein reference was made to this project. Although these minutes preceded the feasibility report by several months, **reference was already made to Government's commitment to issue the concession and the form that it was to assume.***

7. *Despite this Office's efforts, it remained unclear how Projects Malta Ltd were mandated to issue the RfP. **Of greater concern in terms of the governance of the process was that no ministerial authorisation was sought or provided in relation to this concession, resulting in the anomalous scenario where three public hospitals were conceded for operation by third parties without anyone actually assuming responsibility***

for this decision.

This failure in governance rests squarely on the Minister for Energy and Health and to a lesser extent on the PS MEH-Energy.

8. The NAO noted several shortcomings in the design of the RfP. Most evident in this respect were the evaluation criteria, which were deemed subjective, allowing for considerable interpretation in the allocation of marks. Another notable shortcoming was the term set for the concession. Good practice dictates that the term be determined by allowing a sufficient period for the concessionaire to recover the investment made and register a reasonable profit. In this case, no such analysis was undertaken, with the term, and its subsequent option to extend, set arbitrarily.

9. **This Office is of the opinion that the ethical safeguards established in the RfP were breached by the investors of the VGH through the Agreement reached with Government prior to the issue of the RfP. This breach necessitated the disqualification of the VGH as a bidder.**

10. The NAO maintains that a critical element of what defines a services concession is the transfer of risk. Significant concern is registered in this respect as, in this Office's opinion, the balance of risk remained drastically skewed against Government, with the concessionaire guaranteed revenue by Government irrespective of market fluctuations and actual use, thereby further reducing the risk allocated to the concessionaire. This Office contends that the contract may have been more appropriately classified as a public service contract rather than a concession, which classification establishes far more onerous obligations on the part of Government to proceed with this procurement.

11. Another term of reference addressed by the NAO was to determine whether the business model to be employed by the concessionaire was feasible and whether it represented value for money. Although the bid submitted by the VGH satisfied all the requirements set by Government, **this Office is of the opinion that the bid was essentially robust in form but flawed in substance.**

12. The NAO established that the VGH was registered in Malta only a few months prior to the RfP. According to these records, the VGH was wholly owned by Bluestone Special Situation 4 Ltd, which formed part of Oxley Group. In terms of financial soundness, the NAO noted that the VGH submitted a description of the value of the holding companies cited in its bid, which submission was deemed as not fully addressing the requirements of the RfP.

13. **Of grave concern to the NAO was documentation submitted by the VGH as proof of access to finance. A letter issued by the Bank of India sanctioning funding for the "Malta Healthcare Projects" and put forward by the VGH in respect of the bid was dated 13 March 2015, that is, well before the publication of the RfP on 27 March 2015. This Office deemed this document as definite evidence of the VGH's prior knowledge of the planned project and proof of collusion with Government, or its representatives.**

14. Other notable shortcomings identified by the NAO related to the professional and technical elements of the bid by the VGH. This Office noted that the business experience cited by the VGH was not attributable to it, but to the Oxley Group or its strategic partners, or to partners that the VGH had involved in the project. Of note was that the experience cited for Oxley Group mainly related to real estate investment trusts and funds, asset management and financing.

15. Evident was that the timeframes committed by the VGH for the redevelopment of the SLH, the GGH and the KGRH were overly ambitious and unrealistic. The NAO's opinion is based on the consideration of the extensive works required, the fact that works were to be simultaneously undertaken on all Sites, and that the VGH lacked an established set up.

16. Similarly, overly ambitious were the projections made with respect to medical tourism, particularly when one considers that medical tourism in the ambit of public hospitals was a new concept and the infrastructure required. This concern assumes greater relevance when one considers that, according to the bid, it was the revenue forecasted from this source that was to render the project feasible.

17. While the possibility to extend the original concession period of 30 years by a further 69 years was envisaged in the RfP, this Office contends that it was imprudent for the VGH to assume that this would be a given and proceed to base its financial strategy on the full 99-year term. Moreover, credit sought for the financing of the project was conditional on the granting of a 99-year lease. This Office contends that this extension should not have been considered by any of the bidders as an obvious and certain outcome.

18. In sum, the NAO maintains that the VGH submitted a bid that emphasised all the anticipated benefits of entry into this health concession with Government, irrespective of whether they were realistic or otherwise. These commitments included: the renovation of three public hospitals by December 2017; the construction of a medical college; significant improvement in service delivery; the lowering of costs incurred by Government; the strengthening of the hospitals' management function; the development of a comprehensive staff training programme; and an investment of over €190,000,000 by the VGH into the project. The commitments of the VGH were deemed overly ambitious and unrealistic to achieve within the stipulated timeframe.

19. The final term of reference considered by the NAO entailed the analysis of the evaluation of submissions leading to the award of the concession. The bid by the VGH was assessed by the Evaluation Committee in terms of its commercial, technical and financial strength, and the degree to which it exceeded the minimum requirements specified in the RfP. **In this Office's opinion, the evaluation carried out was lacking in terms of critical analysis, with several parts of the evaluation report merely a restatement of the bid by the VGH.** Furthermore, the NAO maintains that the marks

assigned in relation to the technical and operational component of evaluation were not entirely merited. This Office noted that the assessment by the Evaluation Committee of this component of the bid was mainly a summary of the technical proposal put forward by the VGH.

20. Concerns emerge in the Evaluation Committee's assessment of the financial soundness of the VGH. In fulfilment of these requirements, the VGH submitted a description of the value of the holding companies cited in its bid. While the Evaluation Committee considered this adequate in that it did not delve into the matter any further, the NAO considered the information provided in this regard as not fully addressing the requirements of the RfP. This Office's concern intensifies in that the Evaluation Committee did not identify the gross anomalies evident in the letter of financial support sourced through the Bank of India.

21. Bidders were to provide evidence of their professional and technical qualifications and management experience in all areas relevant to the concession. **The NAO identified various concerns regarding these requirements and maintains that these shortcomings were not given due consideration during the evaluation process.** Notwithstanding this, the Evaluation Committee contended that the qualifications and experience cited were deemed acceptable, irrespective of whether these were attributable to the VGH, Oxley Group or any of the partners identified in the bid.

22. Furthermore, in the NAO's understanding, key financial assumptions, such as that the project was not viable without medical tourism and that the VGH's financial strategy was based on the granting by Government of a 99-year temporary emphyteutical title over the Sites, were not adequately challenged, scrutinised or assessed by the Evaluation Committee. These aspects of the bid had a direct and fundamental bearing on the feasibility of the project, yet scant evidence was provided that these elements were comprehensively considered by the Evaluation Committee.

23. The Evaluation Committee undertook a comparison of rates that were to be charged per bed night by the VGH with the actual cost being incurred by Government across comparable services and concluded that the price offered was less than Government's spend. While the NAO acknowledges that this analysis could provide a basis for cost comparison, this Office maintains certain reservations. Chief in this regard is that this comparison did not account for existing inefficiencies in the provision of public health services and failed to consider the efficiency gains that Government sought to obtain through this tender.

24. Although the shortcomings identified by the NAO in relation to the evaluation process remain, these must be acknowledged in terms of the broader and far more significant concerns relating to the integrity of the entire procurement process. **The evidence indicating collusive action between the parties acting on behalf of Government with the investors of**

the VGH renders the entire process dubious, irrespective of whether the process was in adherence with procedural and regulatory requirements.

25. The NAO contends that certain evaluation criteria, in particular those related to fitness and probity of bidders, necessitated a thorough due diligence process. This Office maintains that, beyond the assertion of compliance to administrative requirements and the determination of whether the technical criteria set out in the RfP were met and to what extent, it is reasonable to expect that the process of evaluation would include an element of due diligence on any bidder, more so on that recommended as the preferred bidder. **This Office maintains that the due diligence carried out by Government to verify matters relating to the VGH in its capacity and relationship to it as the preferred bidder to run three public hospitals was grossly inadequate.** This was considered a shortcoming in the procurement process, as comprehensive due diligence is critical in safeguarding Government's interests, especially when considering the materiality and extensive timespan of the project.

26. The shortcomings highlighted above serve to strengthen the argument for more robust background checks, heighten the need for rigorous due diligence screening, bring to the fore the importance of establishing evaluation criteria that are objective and truly assess the ability of the bidder to deliver that bid, and necessitate that evaluation committees verify submissions made with a critical mind.

27. The NAO bases its analysis on documentation made available to it by Government and its various subsidiaries. In the Office's general experience, in this as well as in other audits, it is evident that where matters, decisions, procedures and operations are appropriately documented and corresponding records provided to this Office, the nature of the shortcomings identified can be readily defined and often do not elicit the NAO's greatest concern. It is where no documentation is provided that the Office's most serious concern gravitates towards. This audit is no different. **The major flaws and failings of this service concession can readily be traced to Government's prior Agreement with the VGH before the issue of the RfP, for which relevant documentation was not provided to this Office.** Understanding the RfP process through the perspective of this Agreement changes everything, for the outcome of the RfP was known before feasibility of the concession was determined, before the RfP was drafted and issued, and before the Evaluation Committee was constituted and commenced its consideration of the submissions.

171. It transpires that, as has already been noted above, a few days after this report was published, the document that was undisclosed from the Auditor General, that is, the **Memorandum of Understanding** reached by the Government in October 2013, that is, prior to the commencement of the whole process which led to the contract that is the subject of this cause, was passed on to the Auditor General by the Office of the Prime Minister, and on the basis of this document, the Auditor General proceeded to draw up an **Additional Report** with the following conclusions:³

³ <https://nao.gov.mt/loadfile/5356e198-d255-44c0-a7c7-46a6acc64cf>

70. Having reviewed the MoU dated 10 October 2014, the NAO affirms that all findings and conclusions reached in its initial report on the matter remain unchanged. Concerns highlighted therein are substantiated by the facts brought to the fore in this regard.

71 The NAO is of the opinion that the MoU entered into by Government and the Investors and the subsequently issued RfP can be considered as one process. First, there exists significant overlap between the Investors that entered into the MoU with Government and the owners of VGH that Government subsequently awarded the concession to. Second, the nature of the project remained unchanged as the refurbish and operate model was retained, revenue by Government always guaranteed in the envisaged long-term agreements, medical tourism underpinned feasibility, and the construction of Barts Medical School a central requirement throughout. The only major difference was the reduction in the intended number of beds at the GGH, which reduction was more than compensated for through the inclusion of the SLH and the KGRH. The overlap in terms of the nature of the project and the identity of the Investors is evident and strongly supports this Office's understanding of a process that was fraudulently contrived.

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

172. In regard to the **Memorandum of Understanding**, the Auditor General makes the following examination and observations:

8 Representing Government in this MoU was the Hon. Dr Christian Cardona, then Minister for the Economy. The other party to the MoU were the developers and operators of the proposed project, represented by Mr Mark Edward Pawley in his capacity as Director of Bluestone Special Situation 4 Ltd, Dr Ashok Rattehalli in his capacity as Director of AGMC Incorporated and Mr Mohammad Shoaib Walajahi and Mr Chaudhry Shaukat Ali in their capacity as Directors of Pivot Holdings Ltd (hereinafter collectively referred to as the Investors).

173. The Court here observed that it appears that the company Pivot Holding Limited had been informed **a day** before this agreement, that is 9 October 2014, a clear indication that the negotiations had been going on for some time prior.

9 The MoU was entered into on 10 October 2014. Acknowledged in the MoU was that the Investors were interested in investing in the set-up of a Gozo

Medical Complex, which comprised the extension and operation of the GGH, the construction and operation of an assisted living centre, as well as the construction of a medical school to be operated by Barts School of Medicine and Dentistry. In order to develop and operate this project, the Investors were to establish a company in Malta, which company was to appear on behalf of the Investors in the final agreement.

10 Noted in the MoU was Government's commitment to provide an excellent health service to the Maltese community, to attract medical tourism to Malta and to develop international business in the health and medical sector. To this end, Government agreed to assist the Investors through the grant of land required for the development of the project, subject to its benefit to the Maltese economy, while the Investor committed to putting up and/or procuring all the other required investment.

11 Of interest to the NAO was that, through the MoU, Government agreed not to enter into negotiations regarding any similar project related to the designated area throughout the period of validity of the MoU. Specifically excluded in this respect were the ongoing negotiations with Barts, with the Investors allowing the disclosure of parts of their negotiations with Government that would lead to their collaboration with Barts. The designated area, captured in Figure 1, corresponds to the site on which the GGH is located, measuring approximately 70,000 square metres.

12 The MoU was to come into effect on 10 October 2014 and was to remain valid until the end of February 2015 or when final agreement for the project was reached, whichever was the earlier. Noted in this respect was that if the parties failed to agree on the terms of such an agreement by the end of February 2015, or any extended period as mutually agreed, then the MoU was to be considered revoked and cancelled. Queries regarding possible extensions to the term of the MoU were submitted to the Permanent Secretary Ministry for the Economy, Investment and Small Business (MEIB) and the CEO Malta Enterprise. No information was received in this respect.

13 Cited in the MoU was reference to a 'final deed', at times referred to as a 'final agreement'. In this context, the MoU was not to be construed as a legally binding document until the execution of the final deed. Queries regarding this final deed were addressed to the Permanent Secretary MEIB and the CEO Malta Enterprise; however, no information was provided.

14 Of acute interest to the NAO was the conditionality imposed by Government, whereby the MoU was subject to Government receiving positive due diligence on the Investors. In turn, the Investors were to enable Government to carry out its due diligence and evaluation through the submission of a business plan by 15 January 2015. The business plan was to include the minimum facilities that were to be developed and the timeframes within which the project was to be realised. Instrumental to the compilation of the business plans and of concern to the NAO was that the Investors were to carry out research and gather market intelligence on the needs and scope of the project together with all the relevant Maltese authorities. This Office's

consideration of these aspects of the MoU are addressed in the ensuing section of this report.

15 Subject to entry into the final agreement, the Investors were to develop the Gozo Medical Complex on the site indicated in Figure 1. The site was to be granted by the Government to the Investors for a minimum period of thirty years under the terms and conditions mutually agreed to by the parties. The exact extent, as well as the terms and conditions of the grant of the site were to be determined after the Investors provided their business proposal for the project and this was deemed satisfactory by Government.

16 On signature of the final agreement, the Investors were to provide a monetary guarantee equivalent to an amount that was to be agreed by the parties, which amount was not to exceed 10 per cent of the project costs. This guarantee was to be provided in the form of a performance bond in favour of Government and was to be valid until the completion date of the project, reducing as per the straight-line method from the date of the final agreement to the date of project completion.

17 The project was to comprise:

a the expansion of the existing facilities at the GGH from 210 beds to 410 beds;

b the development of a 200-bed assisted living centre intended for aged and infirm patients who did not require constant medical attention and who occupied hospital beds that could be otherwise used to treat emergency and trauma patients; and

c the construction of a medical school to be operated by Barts.

18 Acknowledged in the MoU was that Government, the Investors and Barts would enter into separate negotiations on the terms and conditions for the grant of the medical school to be built by the Investors as per the specifications provided by Barts. These specifications were to be included in the final agreement.

174. In regard to the importance of the Memorandum of Understanding and the reasons why it appeared evident that this Memorandum of Understanding was the basis that led to the issue of the Request for Proposals and eventual award of the contract to Vitals, the Attorney General makes the following observations:

*34 The 2015 Budget, dated 17 November 2014, represented the first public announcement of the components that would eventually form the basis of the concession of three public hospitals by Government to the VGH. **However, by this date, Government had already entered into an MoU with the Investors for the setting up and operation of a medical complex in Gozo.** The concession awarded to the VGH bore significant similarities in this respect, with the inclusion of the SLH and Karin Grech Rehabilitation Hospital (KGRH) merely augmenting a business model that had already been designed in the MoU. The majority of the Investors in the MoU would*

later constitute the VGH.

...

46 *Central to the line of inquiry of the NAO was why Government elected to transact with these particular Investors. This Office sought to determine how the parties that were to be entrusted with the project indicated in the MoU were identified. The Minister for the Economy maintained that he was not aware of how the Investors were identified and insisted that he was not involved in negotiations held prior to the MoU. The Principal Chief Officer Malta Enterprise informed the NAO that the Investors had approached Government with their proposal; however, he could only provide limited information as neither he, nor Malta Enterprise, were involved first hand. Notwithstanding this, the Chief Principal Officer specifically cited the role played by the former Chief of Staff OPM in this regard. As stated, enquiries with the former Chief of Staff OPM proved to no avail and therefore this Office was unable to determine how contact between Government and the Investors was established and how negotiations between the two parties ensued.*

47 *While the NAO noted that stated by the Principal Chief Officer Malta Enterprise with regard to the Investors first approaching Government with their proposal, this Office maintains reservations in this respect. Although visibility of these critical initial interactions was limited by the lack of information provided, this Office deems the timing of the Investors' unsolicited interest in the GGH project with developments happening in parallel with Barts regarding the setting up of a medical school as highly improbable.*

48 *Given the sequence of events, it is reasonable for this Office to assume that negotiations or discussions between the parties preceded, and possibly followed, the MoU. Queries to this effect were made with the Minister for the Economy and Malta Enterprise who maintained no involvement in this respect. The Principal Chief Officer Malta Enterprise also maintained that Malta Enterprise was not involved in any negotiations. He affirmed that his input in the process leading to the finalisation of the MoU was restricted to proposing the insertion of certain clauses that related to Government's commitment in relation to the Barts Medical School.*

49 *The NAO noted certain discrepancies between the MoU dated 10 October 2014 and the agreement referred to in court proceedings in the MoU dated 23 November 2014 entered into by a subset of the Investors also signatories to the October 2014 MoU. While in the November MoU it was indicated that AGMC Incorporated, Portpool Investments Ltd and Bluestone Special Situation 4 Ltd had entered into an agreement with the Government, the October MoU listed Bluestone Special Situation 4 Ltd, AGMC Incorporated and Pivot Holdings Ltd (represented by Mr Mohammad Shoaib Walajahi and Mr Chaudhry Shaukat Ali) as parties to the MoU with the Government.*

50 *Aside from this discrepancy in some of the counterparties to Government, another divergence noted by this Office related to the scope of the project. The MoU signed by the Investors with the Government on 10 October 2014 only refers to the operation and redevelopment of GGH, whereas the MoU dated 23 November 2014 refers to the same GGH project but also to the potential acquisition of St Philip's Hospital and/or the SLH. This was deemed as indicative of possible negotiations underway between Government and the investors following the signing of the October MoU. Queried on these aspects, the Minister for the Economy noted that he was not aware of any negotiations held and therefore any changes to the Investors or the project. Similarly, the CEO Malta Enterprise and the Principal Chief Officer Malta Enterprise were unaware of any revisions or other MoUs entered into subsequent to that dated 10 October 2014.*

175. In his report, the Auditor General also considers the gravity of the fact that Due Diligence appeared not to have been performed and makes the following comments:

51. *The MoU was contingent on the Government receiving positive due diligence on the Investors. Queries to this effect were addressed to the Minister for the Economy, the CEO Malta Enterprise and the Principal Chief Officer Malta Enterprise. The CEO Malta Enterprise confirmed that due diligence on the Investors had been carried out by Malta Enterprise. This was confirmed by the Principal Chief Officer. **However, of concern to the NAO was that Malta Enterprise did not provide the NAO with any documentation in this respect, citing provisions in the Business Promotion Act and legal advice obtained precluding it from disclosing such information. This Office maintains serious reservations in this regard, contending that provisions intended to safeguard confidentiality as a means to encourage investment should not prohibit scrutiny by the NAO, on behalf of Parliament, more so when the nature of the information sought is certainly not classified as commercially sensitive.***

52 *Concern regarding the refusal to disclose information relating to the due diligence carried out by Malta Enterprise on the Investors is aggravated when one considers that stated to the NAO by the Minister for the Economy. In submissions made to this Office, the Minister for the Economy referred to the due diligence that Malta Enterprise had undertaken with respect to the Investors, noting that the negative outcome of this due diligence in a way led Malta Enterprise to revoke the MoU. The Minister for the Economy informed the NAO that he was not privy to the basis of this negative outcome, citing that this was confidential information that Malta Enterprise was prohibited from disclosing under the Business Promotion Act, unless otherwise instructed by the Prime Minister or by Court order. Despite the lack of visibility afforded to this Office regarding the nature of the negative outcome of the due diligence, the NAO's concerns emerge when one considers that, irrespective of the critical risks flagged, Government opted to persist in negotiations with investors that, for the most part, remained unchanged when bidding in reply to the RfP.*

53 Another requirement emanating from the MoU comprised the submission of a business plan for the Gozo project by the Investors by 15 January 2015. According to the CEO Malta Enterprise and the Principal Chief Officer Malta Enterprise, a business plan was not submitted by the Investors; however, both indicated that **the presentation delivered at the OPM was intended to serve this purpose**. The Principal Chief Officer could not recall the exact date of the presentation; however, noted that it coincided with the deadline for the submission of the business plan. The Minister for the Economy maintained that he was not aware of how the NAO that he was not involved in negotiations held prior to the MoU.

54 Since the Investors were to provide the investment required to finance the project and were also to be entrusted with its operation, the NAO sought to understand how Government ascertained that the Investors had the required financial resources and know-how. In view of the gaps that persist in the NAO's understanding of the process, this Office was unable to verify whether Government assessed the financial and technical capabilities of the Investors. Furthermore, given that Malta Enterprise did not provide the NAO with the due diligence carried out, it was not possible for this Office to determine whether Government undertook the required review of the Investors' capabilities to see the project through, and if such capabilities were assessed, what conclusion was reached.

176. The Auditor General, in his report, on the basis of what he analysed and described, contends that the whole process of the award of the concession and subsequent contracts to Vitals company was vitiated from the very beginning, that is *ab initio*, and to support this, he makes the following observations:

56 The NAO is of the opinion that the MoU and the RfP were a continuation of one process that evolved over time. This Office based this understanding on the fact that:

- a the major shareholders remained the same; and
- b the nature of the project remained consistent in that it comprised:
 - i the operation of a state-owned hospital;
 - ii guaranteed revenue by Government;
 - iii a business model that sought to attract medical tourism; iv a long-term agreement with Government; and
 - v the construction of Barts Medical School.

....

67. In sum, after considering the information made available to the NAO, this Office refutes the assertion that the nature of the project changed from the MoU entered into with respect to the Gozo project to the RfP for the concession of three public hospitals. This Office's understanding is based on the fact that the refurbish and operate model remained essentially unchanged, revenue by Government was always guaranteed in the envisaged long-term agreements, medical tourism underpinned feasibility, and the construction of Barts Medical School remained a central requirement. The only major difference was the reduction in the intended number of beds at

the GGH, which reduction was more than compensated for through the inclusion of the SLH and the KGRH. In essence, the project was not different, but more extensive.

68. *Having established the direct link between the Investors in the MoU and the VGH as the concessionaire, and the evident similarities between the Gozo project and the concession, the NAO's attention shifted to whether these factors vitiated the procurement process. **The NAO maintains serious reservations in terms of the entire procurement process that led to the award of the concession to the VGH. This Office has grave concerns in terms of the design of the RfP. The review of the MoU and the clear links that emerge between this and the RfP, render the likelihood that the RfP was designed with a pre-determined outcome in mind all the more probable. In the NAO's opinion, the public procurement process was undertaken to lend the award of the concession a semblance of regularity and propriety when in fact the outcome of the process was a given.***

69. *Strengthening concerns regarding the vitiation of the procurement process was the reference made in the MoU to the assistance that was to be provided to the Investors by Government in terms of access to information. Government committed to assist the Investors in obtaining the information required to determine the needs and scope of the project and costing information relating to the construction of the proposed medical facilities, the required equipment and the determination of a mutually acceptable basis for charging the Government for all the medical services delivered to patients treated by the Barts Medical School. Queries addressed to the Minister for the Economy and the Principal Chief Officer Malta Enterprise elicited similar responses, in that they claimed that this provision related to generic information made available to all potential investors. On the other hand, the NAO maintains that the details cited in the MoU as to the nature of the information that was to be made available indicated that this was specific to the project. **In view of the overlap between the MoU and the RfP, particularly in terms of the nature of the project, and the similarity between the Investors and the VGH, this Office considers access to such information as constituting an unfair competitive advantage in relation to the RfP, which advantage aggravates concerns relating to the vitiation of the procurement process.***

X. Robert Borg (Vol V - fol 1103 to 1143)

177. In his testimony given on 23 September 2020, Robert Borg stated that he is an Auditor and had been engaged by the Permanent Secretary of the Ministry for Energy, Health and Projects, Mr Ronald Mizzi, in order to be on the Evaluation and Adjudication Committee, where his principal function was to examine the Financials and the Business Plan provided by the investors.
178. The Committee's conclusions subsequently had to be passed on to Projects Malta Limited.

179. He stated that during the whole evaluation process, Projects Malta, that was represented by John Valenzia, was informed with all that was being done, such that in the RfP itself it was specified that whoever had clarification requests could direct them to John Valenzia directly.
180. In regard to the fitness and probity of the applicant, that is, Vitals company, he stated that in the proposal that he had evaluated, it appeared that there was the backing and involvement of Oxley Capital, which is an investment equity fund established in Singapore and that manages two funds, that is, Cambridge International Trust, that has assets of around nine billion Euro (€9,000,000,000) and Blue Stone Investment, that has assets of around five billion Euro (€5,000,000,000).
181. He maintained that, in view of the involvement of Oxley Capital, as well as of Mark Pawley, who is the Executive Chairman of this investment fund, this demonstrated that there was a feasible business plan and therefore this was acceptable to him.
182. He added that the Government's thinking, at the time, was to obtain more patient beds since Mater Dei Hospital was not coping, and therefore it wanted that the private sector invests in a Hospital with its own cash, where the Government ensures regular income from a number of beds paid by the said Government whilst the private sector would be able to gain from its investment from the development of medical tourism that it had to promote.
183. He insisted that the profit that the investor was going to generate was solely from medical tourism and therefore, this aspect of the project was essential for the success of the investment as proposed by Vitals company.
184. He maintained that he never knew of the existence of any Memorandum of Understanding and ensued that, were he aware of it, he would not have accepted the position in the first instance. He stated that, with the benefit of hindsight, had he known that there were the contrivances that there may have been, he would have never accepted the brief.
185. He stated that he was concerned by the fact that there were no other bids, except for the Vitals one, that they could have considered, since the other two bidders had not presented the required guarantees, even in view of the fact that the project was a substantial one of great importance.
186. Nevertheless, he said that at the time when the proposal was made, Vitals company was saying that its capital was going to increase with the Oxley Capital investment to the amount of forty million Euro (€40,000,000) and he was expecting that it would have been expected that in the final agreement made between the Government and Vitals, there would be an indication that this investment would be set in an agreement.
187. He stated however that his involvement and that of the Committee was only until the Evaluation stage and subsequently, the negotiations and agreement had to be

conducted by the Government. Nevertheless, he confirmed that, as appears in the public records of the Malta Business Register, no capital investment was made from Oxley Capital, as explained above.

188. When questioned, he insisted that it was evident that the basis of the whole project was the medical tourism aspect and therefore, if the medical tourism aspect did not succeed, the whole project would fail.
189. In the cross-examination given on 15 March 2022 (Vol XII - fol 2825 to 2828), he maintained that the Lands Authority was never approached in regard to any decisions that were going to be taken.

XI. **Mario Cutajar** (Vol V - fol 1152 to 1157)

190. In his testimony given on 18 November 2020, the Principal Permanent Secretary, Mario Cutajar, presented a copy of the **Memorandum of Understanding** (Vol V - fol 1158 to 1165) signed on **10 October 2014** between the Government of Malta, represented by Dr Chris Cardona as Minister for the Economy and a group of developers and operators comprising Mark Edward Pawley, as representative of a company registered in the British Virgin Islands named Bluestone Special Situations 4 Limited, Dr Ashok Rattehalli, as representative of the Austrian company AGMC Incorporated and Mr Mohammed Shoaib Walajahi and Mr Chaudhry Shaukat Ali as representatives of the local company Pivot Holdings Limited.
191. Questioned whether there was another agreement besides this one, he stated that, as far as he was aware, there was no other agreement.
192. It transpires that, in the preamble of this agreement, the following is stated:

The Government and the Investors are herein collectively referred to as the Parties and may individually be referred to as the Party as may be required by the context.

Whereas the Investors are interested in investing in the setting up of the Gozo Medical Complex, which shall include the extension and operation of the Gozo General Hospital, the construction and operation of an assisted living centre, as well as the construction of a School of Medicine to be operated by Barts School of Medicine and Dentistry (“School of Medicine”) (Hereinafter referred to as the “Project”).

Whereas the Investors are in the process of establishing, and bind themselves to establish, a company in Malta to develop and operate the Project, which company shall appear on behalf of the Investors on the Final Agreement;

Whereas Government is committed to provide an excellent health service to the Maltese community and to attract medical tourism to Malta;

Whereas Government desires to attract international business in the Health and Medical sector,

Whereas the Investors hereby agree to do their best to attract medical tourism, whilst working line with the Government's commitment of providing an excellent health service,

Whereas Government has agreed to assist in accordance with Maltese Law to grant to the subject to the benefit of the Maltese economy, of the land required for the development of a Project; while the Investor has agreed to put up and/or procure all the other investment necessary to develop the Project.

193. It transpires that, according to this agreement, which was valid until the end of February 2015, whilst the Government was precluded from conducting any negotiations in connection with the identified sites, the investors had until 15 January 2015 to present “a fully-fledged business plan with all the necessary details to enable the Government to carry out a due diligence and evaluation.”
194. It also transpires that this period was used “to carry out research and gather market intelligence on the needs and scope of the project together with all the relevant Maltese authorities.”
195. In regard to the manner in which the agreed project was going to run, the agreement makes provision for the following:

9. The Parties are agreeing in principle that the Investors will take over the operation and management of the existing Gozo General Hospital from the date the Final Agreement is signed between the Parties or from any other date which may be mutually agreed to between the Parties.

Provided that a service level agreement between the Parties shall be concluded in this regard.

10. The Government, on its part, shall transfer to the Investors an agreed annual operating expense budget for a mutually pre-agreed period of time. Such budget shall not be less than the current expenses that are currently being borne by the Government with regards to the Gozo General Hospital.

11. The Government will provide the guarantee to the Investors by committing them with a capped number of patients at a pre-agreed rate that would be in line with the medical services which are currently being provided to these patients in Malta.

12. The Parties also agree that the Government shall deploy the existing and/or assigned human resources from the Public Sector and that the Investors shall recruit the services of such employees, the terms and conditions relating to such agreement shall be mutually agreed to between

the Parties before the Final Agreement.

13. *The Investors shall ensure a constant flow of medical tourism into Malta in order to sustain the viability of the Project with regards to the remaining beds which are not taken up by the Government.*

14. *In order to ensure that an excellent level of service is maintained, the Government shall appoint a Medical Certification and Surveillance Board chaired by a person appointed by the Government to ensure service quality. The composition and terms of reference of such Board should be clearly defined in the Final Agreement.*

15. *Subject to a financial agreement between the Parties, the Investors shall undertake to provide sufficient training placements commensurate to the requirements of Barts. The training requirements will be provided to the Investors in due course prior to the Final Agreement. The negotiations between the Investors and Barts shall be mediated through the Government of Malta.*

196. It also appears evident that the Government committed to assist and help the investors in their research with the aim that it would be able to implement the final project, so much so that it entered into the following obligations:

16. *The Government undertakes to assist the Investors in obtaining the necessary information required by them for the purposes of determining the needs and scope of the Project and also to assist them in obtaining costing information regarding the construction of the proposed medical facilities, the equipment needed and to determine a mutually acceptable basis for charging the government for all medical services delivered to patients treated by the School of Medicine.*

17. *The Government shall also assist the Investors in understanding the requirements of Barts including*

- i. The construction of an approximately -1,000 square meter two storey building for students' academic needs,*
- ii. Understand the level of support which Barts' students would require from doctors employed at the School of Medicine,*
- iii. The treatment facilities required for training purposes of such students, and*
- iv. The manner and conditions, including financial conditions, under which such services would be provided to the School of Medicine.*

18. *Government would also assist the Investors in their effort to determine the scope of services to be provided by the Investors for the new School of Medicine project in coordination with the Minister for Health and senior consulting doctors at Mater Dei and Gozo hospitals.*

19. *The Government shall ensure that all permits related to the construction, development, finishing and use of the Project be expeditiously processed according to law with minimum bureaucracy and unnecessary delays.*

20. *The Government shall grant to the Investors, to the extent permissible by law, such exemptions, facilities and incentives as are normally afforded to similar investments, and this in relation to the execution of the Project, the running of the Project, and the employment or hiring of personnel for the Project.*

197. Lastly, the parties agreed that there would be no development on the Gozo Hospital and the Medical School until the agreement is binding, when it was agreed that:

2. The Government shall not enter into negotiations regarding any similar project related to the Designated Area throughout the period of validity of the MOU.

Provided that this does not apply to the ongoing negotiations with Barts and provided further that it is clearly understood that the Investors are hereby giving permission to disclose those parts of the negotiations between the Parties that would eventually lead to collaboration between the Parties and Barts.

This MOU shall come into force on the Effective Date and shall remain valid until the end of February 2015 or a Final Agreement of the Project, whichever is the earlier. Should the Parties fail to agree on the terms of such Agreement under the end of February 2015, or any extended period as may be mutually agreed in writing between the Parties, then this MOU shall be considered revoked and cancelled.

Provided that until the execution of the Final Deed this MOU shall not be construed as a legally binding document, without prejudice to the parties' endeavour to work in good faith.

Provided also that this MOU is subject to Government receiving positive due diligence on the Investors. If such due diligence is negative on any one of the signatories to this MOU, this MOU shall be ipso facto revoked and of no validity upon the dispatch by the Government of an electronic mail or formal letter to the Investors to such an effect.

4. By the fifteenth (15) of January 2015, the investors bind themselves to submit a full-fledged business plan with all the necessary details to enable the Government to carry out due diligence and evaluation.

...

Provided also that the period between the Effective Date and the fifteenth (15) January 2015 shall be utilised to carry out research and gather market intelligence on the needs and scope of the project together with all the relevant Maltese authorities."

XII. **William Wait** (Vol V - fol 1166 to 1200)

198. In his testimony given on 18 November, William Wait stated that he was a Director at Projects Malta together with Alfred Camilleri, who was also Permanent Secretary at the Ministry for Finance whilst the Executive Chairman of this company was Adrian Said.
199. He maintained that Projects Malta was not involved in the preparation and issue of the *Request for Proposals* that was issued on 27 March 2015. Projects Malta's task was only an administrative one, that is, to manage the process that had been initiated by the Ministry for Health with the issue of the RfP.
200. He stated that whilst the evaluation for the preferred bidder had to be performed, and in fact was performed, by the Evaluation and Adjudication Committee engaged by the Ministry for Health, subsequently, following their report, there was subsequently an Operational Committee that was responsible to finalise the contracts, whereby the Committee was led by David Galea, who was a consultant engaged for this purpose by the Minister for Energy, Health and Projects.
201. He insisted that, as Projects Malta, it had absolutely no involvement in the decisions and discussions, and its only involvement was administrative, that is, to organise meetings, exchange of documentation and similar matters that it was requested to undertake.
202. He stated that the Operational Committee never passed on documentation to Projects Malta in order to be forwarded to other parties and he presumes that everything was passed on to the Contracting Authority, that is, the Ministry for Energy, Health and Projects that was responsible for this project.
203. He stated that David Galea was the person responsible for the Drafting and Negotiating Committee that eventually led to the final agreement, and Projects Malta had absolutely no involvement in the process it led, except that they were paid for the services rendered.
204. He revealed that, as far as he was aware, the project matter was referred to the Cabinet at least three times, where once an evaluation presentation was given and another time Dr Mizzi was authorised to sign the final agreement – nevertheless, Projects Malta was not involved at any stage. Its task was just as Secretary.
205. He confirmed, in the cross-examination given on 15 March 2022 (Vol XII - fol 2813 to 2816) that Projects Malta was not a signatory of any documentation in the contracts and its task was solely an administrative one.

206. He also confirmed that John Valenzia was an employee of Projects Malta who was managing the process of this RfP and it was for this reason that his name appears in the clarifications that were being issued as soon as questions were made by whomsoever was interested in the call.

XIII. **Alfred Camilleri** (Vol V fol 1201 to 1258)

207. In his testimony given on 18 November 2020, Alfred Camilleri, Permanent Secretary at the Ministry for Finance, maintained that neither he, in his official position of Permanent Secretary at the Ministry for Finance, nor Projects Malta, had any involvement in the whole project that led to the contract with Vitals.

208. In fact, he maintained that the concession that was given to Vitals company was a Government project, that is, of the Ministry for Energy, Health and Projects of the time, and it was this Ministry that was actually the Contracting Authority responsible for this project, from the beginning till the end.

209. He stated that Projects Malta Limited was a service provider for the Government, that it was there to facilitate the Public Private Partnerships process but would in no way have been involved in them.

210. He maintained that the contract awarded to Vitals company was actually a services concession that, at the time when it was given, was not regulated by any rules, since the rules regarding Public Concessions were issued around a year and a half later,

211. He insisted that in his capacity as Permanent Secretary at the Ministry for Finance, he was never involved in any way except when on 5 December 2014, as representative of the Ministry for Finance, he was requested by Projects Malta to be given the authorisation to manage the whole project itself, as one of the projects contemplated in the Third Schedule of the Procurement Regulations, whereby he rejected this authorisation because he insisted that this was a project of considerable importance that had to be managed directly by a Ministry and not by a Government company.

212. He declared that, from the information that he obtained, it transpires that the Request for Proposals was drawn up by Ganado Advocates, and this **was never passed on to him and he was never consulted about it**, since the contracting authority, that is, the Ministry for Energy, Health and Projects, never involved him in it.

213. He insisted that Projects Malta Limited was not involved in any decision in connection with this Concession since all the decisions were being taken by the Ministry for Energy, Health and Projects and the Steering Committee engaged by the same Ministry.

214. In fact, Mr Camilleri maintained that there was a Steering Committee led by the Minister for Energy, Health and Projects of the time together with the Permanent Secretary and experts engaged by him who were in a position to request the Evaluation Committee to undertake more tasks and analysis on the project –

something which appears not to have been done.

215. He also insists that even the Cabinet had to request every clarification and/or send back the evaluation process for further elaboration, however it is not known if this was ever done on the part of the Cabinet.
- 216. He insisted that, because of the manner in which the process was structured, that had been done through a Request for Proposals, the Minister for Finance and his office, would not be involved in any way and cannot get involved in this.**
217. He observed that ever since he was involved in finance, for more than fifteen years, he had never come across any instance where the Ministry engages a company such as Projects Malta in order to manage a project such as that contemplated in the RfP published by the Ministry for Energy, Health and Projects.
218. He stated that the first time that a presentation of the concession and the financial impact this was going to have on the Government finances was in June 2016, that is, after all the agreements had been signed.
- 219. He also insisted that he was never informed of the existence of a Memorandum of Understanding signed on 10 November 2014.**
220. In regard to the Evaluation process and how this was conducted, he stated that the manner in which the RfP was drafted, the Committee had the right to request any documentation in order to ascertain itself of every aspect of the proposal, and therefore, the Committee had the right to request any documentation that they may have considered necessary.
- 221. In regard to guarantees given by the Government in connection with this project, he maintained that as the person involved mainly in the issue and signing of all the Government guarantees, he is not aware of any guarantee that could have ever been issued by the Government in connection with this project.**
- 222. Questioned whether he was aware of the existence of any agreement of a guarantee of one hundred million, he stated that no guarantee was brought before him so he could approve it. Nevertheless, he states that he is aware of the fact that a so-called Contingent Liability Agreement had been signed, whereby he was never involved in this and only became aware of it from reports in the media.**
223. In regard to shortcomings of Vitals company to achieve the targets imposed on them, he maintained that it was the responsibility of the Contracting Authority, that is the Ministry for Energy, Health and Projects, to verify whether that which was promised was being achieved and, if not, to take the appropriate actions.
- 224. Questioned whether, during his career in Finance, he had ever seen any contingency liability agreement that comes into force in the event that there would be a shortcoming attributable not on the Government but on the other party, he maintained that he had never seen such an agreement being done**

before.

XIV. Professor Edward Scicluna (Vol V - fol 1269 to 1316)

225. In his testimony given on 9 December 2020, Professor Edward Scicluna, who until a few days prior to his testimony he held the position of Minister for Finance from 2013 and was in this position when the agreements that are the subject of this cause, **he maintained that he never knew of the existence of a Memorandum of Understanding that was signed on 10 November 2014 and the Government Cabinet was never informed of the existence of this agreement.**
226. He stated that in the budget speech he gave on 17 November 2014 for the upcoming year, he had made it public that the Government had plans for the rehabilitation of St Luke's Hospital.
227. He maintained that Projects Malta did not fall under his Ministry but fell under the Ministry led by Dr Konrad Mizzi, whilst Malta Enterprise fell under the Ministry for the Economy, that is, Dr Chris Cardona's.
228. He recalled that the project was mentioned in Cabinet for the reason that, since this was a process on the bases of an RfP and not a Tender, there was no appeal process planned, and therefore the Cabinet was informed that provisions were to be made for this
– nevertheless, he maintained that this information was given to them **after** the decision had been taken,
229. He revealed that in March 2016, the Minister for Energy, Health and Projects together with other persons had given a presentation regarding the project and had given them to understand that the Government was not going to spend more than it was spending at present in regard to St Luke's Hospital and the Gozo Hospital.
230. He stated that, whilst he was aware of the fact that both the company Vitals, as well as the company Steward that took over the management from it later on, did not undertake what they had promised, the Government was always granting more time to the said companies to try and reach a solution, particularly when Steward took over the management, that therefore had to come in and solve the various problems that were found.
- 231. Nevertheless, he stated that he is aware of the fact that both Vitals and Steward failed to achieve the obligations imposed on them and that they assumed.**
- 232. He noted that, as Ministry for Finance, it was only in March 2016, after the agreement was signed, that they were informed of the financial implications that this agreement could have had.**
233. He also insisted that Dr Konrad Mizzi, as Minister for Energy, Health and Projects, still did not pass on to him copies of the contract until July 2016 when, following various requests, where with the final one even the Prime Minister was informed,

and eventually on 12 July 2016 he was given copies of the agreement and all the contracts.

234. Questioned whether he was aware of the existence of any agreement that mentions an amount of one hundred million Euro, he stated that he was not aware of any agreement of this kind. He is aware, nevertheless, that at some point, there was some discussion about ten million, but he had objected to a payment of this kind and this was not effected.
235. In regard to this budget speech read in November 2014 where he said, *“The Government is drawing up a master plan for the St Luke’s Hospital area and when this project will be completed, the Government shall issue a call for expression of interest in order that this site, the major part of which remained requested, would be developed in a way that would be for the benefit of the needs of the Maltese and Gozitans including in Health related areas.”* He stated that this information was passed on to him from the Ministry for Energy, Health and Projects.
236. In regard to Steward’s position, he stated that this was discussed in Cabinet and it was decided that Steward could take over the project from Vitals. He stated that he was aware of the fact that he knew that there were ongoing discussions for a solution to be found for the current situation but he did not know their outcome.

XV. Adrian Said (Vol V - fol 1317 to 1333)

237. In his testimony given on 9 December 2020, Adrian Said stated that he was Executive Chairman of Projects Malta Limited between September 2014 and June 2015, a company that fell under the Ministry led by Dr Konrad Mizzi, that is the Ministry for Energy, Health and Projects of the time.
238. He stated that he never knew of the existence of a Memorandum of Understanding signed on 10 November 2014, and it came as a surprise to him where he read about it in the media.
239. He maintained that Projects Malta was not managing the Hospitals project, so much so that when he got involved, he found that the RfP was already ready to be published – this detail is interesting since the Memorandum of Understanding was signed on 10 October 2014, that is, after he took up his position, and therefore this assertion means that in September 2014, the RfP was already known to some people, possibly even the investors themselves.
240. He insisted that whoever was involved in the project was selected by the Ministry for Energy, Health and Projects, which was the Contracting Authority.
241. He stated that the person who was leading the project was the Permanent Secretary within the Ministry for Energy, Health and Projects, that is Ronald Mizzi, and Projects Malta Limited was only a facilitator to assist, where it was not involved in anything except to pay all the consultants that were engaged.

242. In the cross-examination given on 15 March 2022 (Vol XII - fol 2817 to 2818), he again confirmed that Projects Malta's role was that of coordinator between the various entities and had no involvement in the negotiations or transfers that were made.

XVI. **Dr Joseph Muscat** (Vol VI - fol 1341-1408)

243. In his testimony given on 18 January 2021, Dr Joseph Muscat, Prime Minister at the time when the concession that is the subject of this cause was granted, maintained that it was his decision that St Luke's Hospital as well as Karin Grech, and the Gozo Hospital would have the proper investment to be renovated to a good condition and the citizens be given a better service, whereby this investment, nevertheless, had to be brought in from the private sector since the Government had no money. It was for this reason that he had charged the entities concerned to proceed with a public call.

244. He maintained that this project was discussed by the Cabinet twelve times, until eventually it was approved by the whole Cabinet.

245. He stated that he was informed that third parties had made a proposal to Malta Enterprise regarding a hospital investment but, following a presentation that was given to Dr Konrad Mizzi and Mr Chris Fearn, who at the time were both within the Ministry for Energy, Health and Projects, he was informed that that proposal was not in line with the Government's vision to modernise and bring in the private sector's involvement. Therefore, he had instructed them to issue a public call whilst, as far as he was informed, the Memorandum of Understanding was dropped.

246. He insisted that the fact that members of Vitals company, prior to being formed, had entered into a Memorandum of Understanding with the Government, had absolutely no relevance to the award of the final contract to Vitals and there was no reason why Vitals should not be considered and eventually awarded the final concession.

247. He maintained that it was not true as was being said that the Government was paying €250,000 daily to Vitals company, because a substantial part of the sum paid is actually payable in salaries to the doctors, nurses and whoever is involved in the Hospital and for the remainder, there is the VAT element that, after deducting everything, it transpires that Vitals company is being paid €64,000 daily.

248. He insisted that, contrary to what the applicant is alleging, several investments were made by Vitals company in line with what it is obliged to undertake. He maintained that the medical school in Gozo was completed with an investment of thirty-five million Euro, Orthodontic and Prosthetics Unit in Karin Grech Hospital of around two million Euro, an increase of around twenty-eight beds in St Luke's Hospital, the acquisition of a new Air Ambulance for Gozo and an increase in beds in Gozo. **He stated, however, that he still considers that not enough was done.**

249. He insisted that it was not true that the land had been given to Vitals company for ninety years, where he maintained that the property always remained under Government ownership and eventually would revert back to the Government with all

the development that would have been completed.

250. Questioned why the Government had accepted that the contract be taken over by the company Steward instead of Vitals, despite the significant shortcomings that there were, he stated that *“when faced with a situation where there is a leading international American company that is seeking to expand its horizons outside of the United States and outside of certain other areas and wants to enter Malta, it would be irresponsible for that Government not to allow this to happen”* (fol 1357).
251. He also maintained that due to the limitations imposed on the Government by the European Union as well as the Government’s financial limitations, the only way that serious and effective investment could be made in the Hospitals was through private sector investment, as had happened and as was happening.
252. Questioned regarding the existence of a contract of one hundred million, **he states that he was surprised that such a sum is mentioned since he is not aware of any agreement of this kind.** Nevertheless, he is aware of the fact that there is an agreement that, in the event that if this cause is decided for the applicant and therefore the Government takes back all the assets involved, the Government shall have to make good with the local Bank that loaned the money to Vitals company in order for the investments to be made for all that was loaned. Nevertheless, he was not aware whether the sum actually due amounts to one hundred million, as it being alleged.
253. He insisted that it was not true that there was no investment in the Hospitals, since he noted that, in this cause, this was not only a question of investment but it was a matter of leadership and vision and this was successful.
254. He maintained that the project had problems with the Planning Authority as well as with the Opposition that had even involved the European Commission in the matter, whereby all these problems delayed the obtainment of the desired results.
255. He maintained that the Barts medical school in Gozo was crucial since this involves the element of the Hospitals’ sustainability, where the Government starts earning money without spending it.
256. In regard to the process of the award of the contract, he insisted that in no way did he intervene in the selection process and left it in the hands of whoever was managing matters, that is, the Minister for Energy, Health and Projects, Dr Konrad Mizzi.
257. He stated nevertheless that the Lawyers engaged to draw up the RfP, that is Ganado & Associates, were given instructions by the Government regarding what should be included in the RfP.
258. Questioned in regard to the connection between the Memorandum of Understanding and the Request for Proposals, he insisted that there was no connection between them, since the two had different parameters.

259. He also indicated that Steward's involvement was not a result of some Government intervention, but they came voluntarily whilst he was not in a position to say whether it was actually Vitals that approached them.
260. **He confirmed that when discussions were being held for Steward to take over the concession, no changes were made to the original agreement that had been made with Vitals, and therefore the obligations that were assumed originally were still applicable.**

XVII. **Ronald Mizzi** (Vol VI - fol 1422 to 1462)

261. In his testimony given on 8 February 2021, Ronald Mizzi, Permanent Secretary at the Ministry for Tourism and Consumer Protection, states that between 2014 until 2016, he was Permanent Secretary at the Ministry for Energy, Health and Projects.
262. He maintained to the Court that, as far as he was aware, whilst there is no addendum to the agreement signed with Vitals, there is a so-called tripartite agreement between the Stewards companies, the Government and the Bank of Valletta, that consists of a **Direct Agreement** as well as an **Amendment and Restatement Agreement** that were signed on 22 June 2018, and subsequently amended on 13 November 2018, 17 July 2019 and 27 August 2019 (fol 1465), where the last one was signed on 27 August 2019. (fol 1463)
263. He stated that this agreement was necessary in view of the transfer made from Vitals to Steward, since after Steward took the concession from Vitals and were being given various loans from Bank of Valletta, the said Bank of Valletta wanted to have guarantees in hand to vouch for the money that it had passed on to the company Steward from when the said Steward took over the management, whilst the company Steward wanted some kind of assurance in the event that the contract it had entered into would be declared null and void.
264. He maintained that he was not involved in any negotiations that led to the signing of such an agreement, whereby he became aware of this agreement after it had been signed, but nevertheless, he was informed that the agreement was raised in Cabinet to be discussed and approved prior to the signing.
265. He stated that he is informed that Bank of Valletta plc had their concerns regarding their position in the event that the contract that is the subject of this cause is declared null by the Court and in this cause.
266. He revealed that, as far as he is aware, in the event that the Bank was not given a security by the Government, they would not provide the required loan to Steward to the amount of around €27,500,000 which, from their part, was required in order that the Barts medical school in Gozo could be built.
267. In regard to a question made to him, he stated that the agreement was made in view of this cause.
268. He also confirmed that the remainder of the penalty is that related to a non-rectifiable

event of default accepted by the Government in the event that the original agreement is declared null.

269. It transpires that the agreement made on 27 August 2019 stipulates the following in its preamble: (fol 1466)

- (A) Whereas the Government, Holdco (Steward Malta Ltd), Assetco (Steward Malta Assets Ltd) and ManagementCo (Steward Malta Management Limited) entered into a concession agreement dated 30 November 2015, as amended, supplemented and/or varied by amendments, addenda and/or side letters dated 19 May 2016, 15 September 2016, 14 February 2017, 23 June 2017 and 30 June 2017, a copy of which was provided to the Bank (the “Concession Agreement”), whereby the Government granted the Concession (as defined below) in favour of the Concessionaire (as defined below).*
- (B) Whereas by means of a first sanction letter dated 8 May 2018, the Bank granted in favour of ManagementCo an overdraft facility in a total amount of five million Euro (€5,000,000) for the purpose of financing ManagementCo’s working capital requirements in connection with the operation of the Sites (as defined below) in terms of the Concession Agreement, upon the terms and conditions outlined therein (the “First Sanction Letter”).*
- (C) Whereas by means of a loan agreement dated 19 September 2018 (the “Second Loan Agreement”), the Bank granted in favour of the ManagementCo, a loan facility in a total amount of three million Euro (€3,000,000) upon the terms and conditions contained in the Second Loan Agreement (the “Second Facility”).*
- (D) By virtue of a facility agreement dated 17 July 2019, the Bank granted a term loan facility in the aggregate amount of €22,000,000 in favour of AssetCo, and a term loan facility in the aggregate amount of €5,900,000 in favour of Managements, subject to and in accordance with the term and conditions contained therein (the “Third Facility Agreement”).*
- (E) The Second Facility will be refinanced and repaid in full by Managements using the funds made available to it under the Third Facility Agreement.*
- (F) As a condition precedent to the drawdown of the facilities granted by the Bank under the First Sanction Letter and the Third Facility respectively, the Parties have agreed to enter into this Agreement.*

270. It transpires that, among other matters contemplated and agreed in the agreement, there is a section that concerns the **Termination of the Concession** and stipulates the following:

3.1 Government hereby acknowledges its obligations in the instance of

the termination of the Concession Agreement or the termination of the Health Services Delivery Agreement, in accordance with clause 33 of the Concession Agreement.

3.2 Government hereby acknowledges and confirms that its obligations in terms of clause 33 of the Concession Agreement and in terms of clause 24 of the Health Services Delivery Agreement shall be due to the Bank until such time as all the Secured Obligations have been discharged in full. Any payment made in terms of clause 33 of the Concession Agreement shall firstly be made to the Bank to discharge any Secured Obligations that remain outstanding.

3.3 The Parties hereby agree, acknowledge and confirm that:

- (i) if, by way of any Applicable Law or any final order, **judgement (emphasis by the Court), decision, notice, decree or any other instrument of any Public Body or otherwise, any of the Transaction Agreements are wholly or partially rescinded, terminated, declared to be null or void or invalid, withdrawn, annulled, cancelled, repealed or quashed, such an event shall be deemed to be a Non-Rectifiable GoM Event of Default**;*
- (ii) the Government hereby acknowledges and confirms that its obligations in terms of clause 33 of the Concession Agreement and in terms of clause 24 of the Health Services Delivery Agreement shall be due to the Bank until such time as all the Secured Obligations have been discharged in full;*
- (iii) the definition of “Public Bodies” under the Services Concession Agreement shall be deemed to include (a) the GoM, any subdivision thereof, or any local governmental authority with jurisdiction over the Project or any part thereof or any Concessionaire, or (b) any department, authority, instrumentality, agency, or judicial body of the GoM, or any such local governmental authority, (c) courts and tribunals in Malta or any other judicial, executive or quasi-judicial authority or body, and (d) any commission or independent regulatory agency or body having jurisdiction over any Concessionaire, the Project or any part thereof.*

271. It transpires that according to the Services Concession Agreement signed between the Government and Vitals on 30 November 2015 (fol 1884 - 1954), the following is stated:

33.4.4 The Parties agree that during the existence of a Non-Rectifiable GoM Event of Default, the Concessionaire shall automatically be relieved from its obligations in terms of this Agreement

...

33.8 Termination Payments

33.8.1 GoM undertakes and agrees that upon Termination, pursuant to this Clause 33, the payments in terms of Schedule 7 shall be paid to the Concessionaire.

33.8.2 Any compensation paid and settled in full by GoM to the Concessionaire pursuant to Schedule 7 shall be in full and final settlement of any claim of the Concessionaire in relation to any Termination of this Agreement (and the circumstances leading to such termination) and the Concessionaire shall be excluded from all other rights and remedies in respect of any such termination. Provided that this shall be without prejudice to any and all other claims pertaining to the Concessionaire against GoM in respect of amounts due and payable under the Transaction Agreements.

272. It transpires that Schedule 7 of the Agreement [says] that, in the event of “Termination due to a GoM Event of Default”, the penalty due by the Government to the Concessionaire should be of: (fol 1946)

“Lender’s Debt + Eur 100 million (hundred million Euro)”

273. It transpires therefore, that through an agreement dated by Dr Konrad Mizzi on 27 March 2019, the original agreement of 20 September 2015 was changed in order that, in the event that such an agreement is annulled by a Court, the Government would pay the company Steward €100,000,000 as penalty whilst assuming all its debts.

XVIII. Mr Chris Fearne (Vol VIII fol 2079 to 2132)

274. In his testimony given on 1 March 2021, Mr Chris Fearne, Deputy Prime Minister and Minister for Health, who, at the time of the contract, was Parliamentary Secretary at the Ministry for Energy, Health and Projects, stated that **he was never aware and/or was informed of the existence of any Memorandum of Understanding that may have been done regarding the Gozo Hospital, whereby he only became aware of this Memorandum through the broadcasting media.**

275. He maintained that, when a presentation was given in his presence, the Malta Enterprise one, at the beginning of 2015, this presentation was given solely by Mario Vella, Chairman of Malta Enterprise at the time, and other persons employed by Malta Enterprise, who had informed him that there was a Memorandum of Understanding, that however had terminated, however he was never divulged with whom this Memorandum had been signed.

276. He insisted that, during the whole RfP process as well as the final selection, the Parliamentary Secretariat for Health, in which he was involved, was never involved in any way and everything was led by Konrad Mizzi, Minister for Health at the time, without ever involving Mr Fearne.

277. He stated that when a project presentation was delivered to the Cabinet, although he does not recall at which stage, whether it was when the RfP was about to be issued or else when the concession had already been awarded, he had immediately expressed

his concerns regarding the project, where he had said that the Private Public Partnership as presented did not make sense.

278. In regard to the project itself, he stated that there were various levels of scrutiny that should have been carried out with the concessionaire as soon as the agreement was signed.
279. The first level was that concerning the standard level of the health services at the Hospital, where he stated that the health standard level at the Gozo Hospital had improved and new required equipment was brought in.
280. The second level was that regarding the infrastructure, where up to prior the 2017 election, this was exclusively in the hands of Projects Malta. He was not satisfied with the work being undertaken, where it was evident that Vitals company was not achieving the milestones imposed on it, and it was for this reason that he insisted to start getting the Ministry directly involved in the project, so much so that he set up a team for this purpose, that concentrated mainly on the Barts Medical School, that was very concerned regard the fact that the building had not yet been completed and the rest of the project was lagging behind.
281. He stated that, subsequently, after starting to achieve the desired results in the Barts project, he started concentrating on the Malta Hospitals and in this regard, he said the following:

Then we started to concentrate on the masterplan of the new St Luke's and Karin Grech hospitals ... ehm ... however I must say that I, at one point, even during the negotiations, I was realising that despite that I would be negotiating and discussing with Steward, there were negotiations in parallel with ... with ... with Minister Mizzi too ehm ... I was already not happy with that situation and in fact I had ehm ... had come to a stage eventually that in November 2019 I had prepared a memo to say that, listen, either the whole concession shall be under the responsibility of the Minister for Health from start to finish, or else the concession would no longer have the involvement of the Minister for Health. Ehm ... that memo was to be raised on 28 November 2019 and on that day, as you know, Konrad Mizzi resigned as Minister.

282. In regard to those discussions that were being held with Steward without your knowledge in parallel with the discussions that he had with Steward, Dr Fearne had the following to say:

So let me tell you, yes ... the ... so in 2019 ... it may also be at the end of 2018 ... ehm ... Steward were delivering their view that as Ministry for Health we were interpreting parts of the LSA and the concession ehm ... rigorously whereby the payments that they felt that we had to make, were not being fully paid, in their opinion. We were saying that we were interpreting it differently. Ehm ... and so they were telling us that with the level of service that we were expecting, and with the manner in which we were rigorously interpreting the ... ehm ... parts of the concession, they were having issues operating the concession without losing money. And so, they wanted to open

up further discussions. I was discussing with them however in the meantime, I discovered that they were discussing the same thing with ... with Minister Mizzi and with the office of the Prime Minister. Ehm ... eventually Minister Mizzi presented a non-binding MoU that was a result of these discussions that I made clear that I did not agree with him and then we came to this stage at the end of November.

283. He stated that, in regard to the works that had to be done, the Medical School was now completed whilst the “*hospital buildings, as everybody knows, are not ready.*” He stated that he was informed that the works could not be done because it was thought that these works would be done through a DNO, but subsequently it transpired that this was not possible and therefore the Planning application process took its time.
284. In regard to the Share transfer from Vitals to Steward, he stated that he is not aware that such a transfer ever went through the Cabinet for its approval and maintained that he never knew that there were some discussions that Steward would take over the company from Vitals prior to the agreement being actually done.
285. In regard to the penalties due by the Government in the event that this cause is lost, he maintained that whilst the Government was ready to vouch for the debts with the Bank, he is not aware of the fact that the penalty of one hundred million euro imposed on the Government by Steward is actually due, where he states that he was made aware that this was not the case.
286. He stated that his Secretariat was initially involved in the project after the Evaluation and Adjudication Committee had selected Vitals company as the Preferred Bidder.
287. Questioned whether he knew whether Vitals company had brought the financing that it had promised to bring in its proposal, he stated that, whilst he does not have information regarding other financing, he was informed that Vitals company obtained a loan from the local bank, Bank of Valletta, for whom the Maltese Government was acting as guarantor.
288. He stated that at St Luke’s Hospital, despite the obligations imposed on Vitals company, where they had to provide a substantial number of beds, none of this has been done to date, except for the opening of a Hospital unit for Orthonics and Physiotherapy.
289. He maintained that at the time when disagreements arose between him and Minister Mizzi regarding the negotiations with Steward, he was objecting to Steward’s requests for payment increases, something to which, on the other hand, Dr Mizzi was not agreeing, such that he signed a non-binding Memorandum of Understanding with Steward where payments were to be made according to Steward’s demands.
290. He insisted that, as soon as Dr Mizzi resigned, and therefore he took up full responsibility of the Hospital, he insisted with Steward that the non-binding Memorandum of Understanding made by Dr Mizzi was not valid for him and was still insisting that no additional payments would be made – when Dr Fearné testified,

he revealed that negotiations to that effect were still ongoing.

291. In regard to the Government's position with the company Steward today, Dr Fearne said the following:

So ehm ... in these last ... at least a year ... we have long been negotiating ... when I say we have long been negotiating ... it is not only my Ministry but the Ministry for Finance and the Office of the Prime Minister ... with Steward Health Care regarding the future of this concession. You as lawyers teach me ... it is called pacta sunt servanda ... we did not start from scratch but we started from what you have before you and we are negotiating. Ehm ... the service ... the service remains the most important matter. The signed concession is what it is ehm ... but yes we have to ensure that the people ehm ... get ... get a good service too. They are ongoing ... and we hope ...

292. In regard to the agreement made by Dr Konrad Mizzi on 27 August 2019, where the Government committed to pay a penalty, Dr Fearne maintained that this occurred at the time when things were being done without his knowledge and behind his back by Dr Mizzi, and that therefore he knew absolutely nothing about them, whereby this contract eventually led to him presenting an official memo to the Cabinet which was to be discussed on that day that eventually Minister Mizzi had resigned from his capacity as Minister – 26 November 2019 (whereby this resignation, this Court notes, took place after Dr Mizzi had testified on that same day before this Court in this cause).

293. He also insisted that, when that agreement was explained to the Cabinet, it was explained that the Government was only going to vouch for the Bank of Valletta loans – no reference was ever made to the fact that the Government was going to commit to pay a penalty of one hundred million in the event that the contract is annulled by this Court.

XIX. **Marthese Debono** (Vol IX – fol 2141 to 2152 and Vol X – fol 2425 to 2444)

294. In her testimony given on 12 April 2021, Marthese Debono, a Planning Authority representative, requested to testify regarding applications for any type of reconstruction from Vitals Global Healthcare, Steward Healthcare or any affiliated company, of St Luke's Hospital, Karin Grech Hospital and in the Gozo Hospital from 2015 onwards, stated that there were various applications.

295. By means of **application no. 3134/16** of the type **Full Development Permission**, filed on 24 May 2016, the company Vitals Global Healthcare Management Limited, with correspondence to Ram Tumuluri according to the said application, made a Development Request for St Luke's Hospital, and the Proposal was '**Restoration of elevation of main building within St Luke's Hospital Complex**', whereby the permit was granted on 2 September 2016. (fol 2153 to 2207)

296. It appears that, according to a document dated 7 October 2016 (fol 2445), the work was due to start on 15 October 2016.

297. There is no indication whether these works were started and/or whether they were completed.
298. By means of **Development Notification No 1283/17** filed on 15 December 2017, of the type **Development Notice**, the company Vitals Global Healthcare Management Limited, with correspondence to Ram Tumuluri according to the said application, made a request for '**Minor alterations to St Luke's Medical School**'. (fol 2207 to 2223)
299. It appears that there no Commencement Notice filed in order to indicate that the works had actually started.
300. By means of **application number 1535/20** of the type **Outline Permit** filed on 20 December 2019, the company Steward Malta Assets Limited made a request described as '**Masterplan for the rehabilitation and upgrading of St Luke's Hospital for medical healthcare and ancillary facilities**'. (fol 2225 to 2231)
301. It appears that after a deadline extension request so that the applicant Steward would provide more details, on 20 May 2020, the company Steward was informed that the application was being suspended in view of the various shortcomings, initially until 21 May 2020 (fol 2450) and subsequently until 20 May 2022.
302. There is no indication whether any other development was made in connection with this application which therefore the Court considers to be still pending.
303. By means of **application number 1635/20** of the type **Full Development Permit** filed on 19 February 2020, the company Steward Malta Assets Limited made a request described as '**Upgrading of St Luke's Hospital (class 2A - a.b.c.d). To demolish Out-patients bldg, Doctors' Quarter, Hyperbaric, Boiler house, Kitchen, X-Ray, ITU, Physiotherapy and part of Engineering building. Proposed excavation for underground parking, rehabilitation of existing main building and ancillary Chapel, construction of underground Car park and rehabilitation center, external landscaping, rerouting roads and surface car parking.**' (fol 2231 to 2236).
304. It transpires that on 6 May 2020, the Authority requested several clarifications and information that was not provided as well as a payment of €148,835 for costs. (fol 2452 to 2455)
305. It appears that on 10 November 2020, the company Steward made a request for an extension of the deadline for the plan submissions until 19 November 2021, whereby this permit was granted by the Authority on 18 November 2020.
306. There is no indication whether any other development was made in connection with this application which therefore the Court considers to be still pending.
307. By means of **application no. 5493/16** of the type **Full Development Permit** filed on 11 August 2016, the company Vitals Global Healthcare Management Limited, with

correspondence to Ram Tumuluri according to the said application, made a Request for Development for Gozo General Hospital, and the Proposal was ‘**Demolition of existing structures and construction of 3 storey and 1 receded floor of medical school**’, whereby this permit was granted on 14 February 2017. (fol 2237 to 2248)

308. This permit regarded the construction of the Medical School in Gozo.
309. It transpires that according to a document signed on 7 March 2017, the work should have commenced on 17 March 2017 (fol 2447).
310. No evidence was provided that such works were done, nevertheless the Court understands that the medical school was opened and therefore the Court comes to the understanding that possibly these works were completed.
311. By means of **application no 7491/16**, of the type **Full Development Permit**, filed on 14 November 2016, the company Vitals Global Healthcare Management Limited, with correspondence to Ram Tumuluri according to the said application, made a Request for Development for Gozo General Hospital, and the Proposal was “**Major alterations, including part demolition and reconstruction and refurbishment of existing Gozo General Hospital, to increase number of beds from 270 to 450 inclusive of all ancillary facilities.**” (fol 2349 to 2359).
312. It transpires that on 9 February 2017, the Authority requested several clarifications and information that was not provided as well as a payment of €135,487 for costs. (fol 2456 to 2460)
313. It appears that in February 2017, a request was made for an extension of the deadline for the plan submissions, and by means of a letter dated 22 February 2021 addressed to Steward Malta Assets Limited, an extension was granted until 1 September 2021.
314. There is no indication whether any other development was made in connection with this application which therefore the Court considers to be still pending.
315. It transpires that, by means of **application no. 9895/17** of the type **Full Development Permit**, filed on 12 February 2018, the company Vitals Global Healthcare Management Limited, with correspondence to Ram Tumuluri according to the said application, made a Request for Development for Gozo General Hospital, and the Proposal was ‘**Demolition of part of existing hospital and erection of proposed stores**’ (fol 2368 to 2386).
316. By means of **application no. 1040/19** of the type Full Development Permission, filed on 21 January 2019, the company Steward Malta Assets Limited, filed a Request for Development for Gozo General Hospital and the Proposal was ‘**Proposed installation of oxygen tank and safety fence**’, whereby this permit was granted on 19 June 2019. (fol 2396 to 2404)
317. It transpires that by means of a document signed on 7 April 2020, the work, identified as ‘Emergency Works’, should have commenced on 7 April 2020. (fol

2448)

318. By means of **application DN 168/20** of the type Development Notification filed on 17 February 2020, the company Steward Malta Assets Limited made a Request for Development for Gozo General Hospital and the Proposal was ‘**To sanction minor alternations to plant area**’, whereby the permit was granted on 17 February 2020. (fol 2410 to 2413).

XX. Engineer James Grima (Vol X - fol 2470)

310. In his testimony given by means of a one-page affidavit presented on 24 September 2021, Engineer James Grima is the only witness summoned by the respondent companies Steward, and he stated that he is Director of Facilities Management at the hospitals operated by Steward, that is, Gozo General Hospital, St Luke’s Hospital and Karin Grech Hospital.

311. He presented a report that contained a series of photographs that show various works executed at the Hospitals, including the following: (Vol X - fol 2471 to 2507)

- 1) *Introduction of Helicopter Services* (2016)
- 2) *Dedicated CSSD Air Plant GGH* (2017)
- 3) *New Reception Area GGH* (2017)
- 4) *Refurbishment of Dental Clinic GGH* (2017)
- 5) *New Stroke Unit SLH KGH* (2017)
- 6) *New Orthotics and Prosthetics Unit OPU* (2018)
- 7) *New Reception KGH* (2018)
- 8) *New Fleet* (2018)
- 9) *New Anatomy Centre QMUL* (2018)
- 10) *Male General Ward Sluice Room GGH* (2019)
- 11) *Operating Theatre Automatic Climatization GGH* (2019)
- 12) *New Doctors’ Quarters GGH* (2019)
- 13) *Laboratory Refurbishment GGH* (2019)
- 14) *Orthopaedic Ward GGH* (2019)
- 15) *Female General Ward Sluice Room GGH* (2019)
- 16) *Operating Theatre Backup Chiller GGH* (2019)
- 17) *Mortuary Refrigerated Cabinet GGH* (2019)
- 18) *Physiotherapy Outpatients Upgrade GGH* (2019)
- 19) *Replacement of Diesel Tank for Generator GGH* (2019)
- 20) *New Oxygen and Vacuum Control Panels GGH* (2019)
- 21) *Ward Upgrades RW6, RW9 SLH KGH* (2019)
- 22) *Barts School of Medicine and Dentistry* (2019)
- 23) *Expansion of Day Care Unit* (2019)
- 24) *New Fire Detection System* (2019)
- 25) *Covid Preparations KGH* (2020)
- 26) *Oxygen through VIE GGH* (2020)
- 27) *Physiotherapy Hydrotherapy Pool upgrade SLH KGH* (2020)
- 28) *Major Disaster Setup GGH* (2020)
- 29) *New Vacuum Plant GGH* (2020)

- 30) *New Medical Air Plant GGH (2020)*
- 31) *Physiotherapy Outpatients Upgrade SLH KGH (2020)*
- 32) *Replacement of roof of Dining Area GGH (2020)*
- 33) *Emergency Department Refurbishment GGH (2020)*
- 34) *Covid-19 Preparations GGH (2020)*
- 35) *Upgrade of General Toilet Facilities GGH (2020)*
- 36) *OT Upgrade SLH (2021)*
- 37) *Upgrade of Welders Workshop KGH (2021)*
- 38) *Upgrade of Security Room Facilities SLH KGH (2021)*
- 39) *Upgrade of Stores and Offices SLH KGH (2021)*
- 40) *Upgrading of Traffic Management on SLH Campus (2021)*
- 41) *Setup of garden for patients SLH KGH (2021)*
- 42) *Restoration of SLH Chapel (2021)*
- 43) *Installation of Macerator System in Wards (2021)*
- 44) *Upgrade of Transport Section GGH (2021)*
- 45) *Setup of New Pharmacy Stores and General Stores and Medical Library GGH (2021)*
- 46) *New Lift and Staircase GGH (2021)*
- 47) *Setup of Building Management System GGH (2021)*
- 48) *New Facilities for various Department GGH (2021)*
- 49) *Refurbishment of bathroom in Female General Ward (2021)*
- 50) *Refurbish Telephone Operators/Control Room (2021)*

XXI. Records of the cause Application No. 98/21 RGM ‘Steward Malta Limited vs Medical Association of Northern Virginia Inc Profit Sharing Plan’ (Vol X - fol 2512 to 2527)

312. It transpires that on 3 February 2021, the respondent companies Steward, in proceedings that are not directly connected to this cause but related to the concession that is the subject of this cause, that is, enforcement of a decision of English Courts in Malta, filed proceedings pursuant to Article 46 of Regulation (EU) 1215/2012 in order to contest the execution of a decision given against them in the United Kingdom in 2020.
313. It transpires that the company Steward’s argument with which it was objecting to the execution of the judgement given against it was the following:

26. Recently, at a time when the proceedings before the Court in the United Kingdom had reached a very advanced stage, it transpired that the Concession had originally been granted as a direct consequence of fraudulent conduct of its investors (including Gupta) in the Health Project, in breach of public procurement regulations;

...

32. Therefore, all this suggests that officials of the Government of Malta of the time, together with investors (including Dr Amrish Gupta, as well confirmed in the NAO Report) entered into secret agreements, prior to the

commencement of the tendering process, whereby these agreements granted the concession (that was directly beneficial to the investors) before the tendering process had taken place. This gives to understand that there are serious shortcomings in the tendering process itself. This fact, together with other elements such as a comfort letter from the Bank of India that was sent prior to the RfP that expressly refers to the Maltese projects, led the NAO to conclude that there was collusion between the parties, with the procurement structure and order agreed in advance and that the public procurement process made was intended just as a superficial exercise that led to a result that had already been determined.

...

*41. The payments due under the Settlement Agreement, that was signed in order to resolve disputes that are directly related to the collaboration agreement in the Concession, are a result of collusion that was identified in the NAO Report and the Addendum as one that constitutes a serious shortcoming in the procurement process. As a result of this, the obtainment of the execution of the Judgement in Malta constitutes a violation of the public strategy of Malta due to the principle that *ex turpi causa non oritur actio* [No action can arise from our illegal act];*

...

46. Therefore, the Judgement cannot be executable in Malta because it flagrantly breaches the public strategy of Malta. The Respondent should not be allowed to make a profit from the irregularity that it committed, through its involvement in the collusion that led to the award of the Concession to VGH even before the tendering process began. Moreover, besides this, the execution of the judgement in Malta would not be in the public interest, because this is not simply a case of prejudice for the rights of a private entity (the Applicants) but a scheme that was committed with prejudice for Maltese society in general and has a direct consequence on Malta's health system;

...

Therefore, in view of the above and except for any necessary and appropriate declaration that this Court may deem to be proper and appropriate, the Applicants request this Honourable Court to reject the execution of the Judgement in Malta on the basis of the above-mentioned reasons, with costs against the Respondent.

314. It transpires that these proceedings were withdrawn by the company Steward on 15 February 2022, whilst no reason was given by the company Steward on why they were withdrawn – presumably, some agreement was reached.

XXII. Architect Joseph Attard (Vol X - Fol 2530)

315. In the one-page affidavit of Architect Joseph Attard, filed on 10 December 2021, as Chief Executive of the Company INDIS Malta Ltd, that was previously known as Malta Industrial Parks Limited, he stated that the main purpose of INDIS is to manage Industrial areas according to the Lands Act, whereby these tasks were previously the responsibility of the Commissioner of Land.
316. He stated that he entered into his position recently and was not involved in the signing of the contract on 22 March 2016.

XXIII. Auditor General’s Report dated December 2021, entitled ‘An Audit of Matters Relating to the Concession Awarded to Vitals Global Healthcare by Government - Part 2 - A Review of the Contractual Framework.’ (Vol X - fol 2534 - 2764)

317. It transpires that in December 2021, the Auditor General presented the second part of the investigation he conducted, upon request of the Public Accounts Committee, whereby “A Review of the Contractual Framework”⁴ was carried out.
318. It transpires that this four hundred- and sixty-four-page report is a continuation of the initial report presented in July 2020, where this time the Auditor General examined the Contractual aspect of the award of the Concession.
319. Whilst it is not logistically feasible that the whole report is reproduced here, this Court nevertheless deems it proper and appropriate to refer to some of the comments and conclusions made, whereby these comments, for once, confirms that it deems that it should take on as its own as well.
320. In regard to the whole process that was employed and that led to the award of the final contracts, the Auditor General had the following to say:

5. The NAO was unable to audit the process of negotiation held between Government and the VGH as information made available was severely limited. As a result, it was not possible for this Office to understand how key terms of the concession were determined, the precise role played by those involved in negotiations and whether critical changes were appropriately endorsed.

⁴ <https://nao.gov.mt/loadfile/4fd2d242-2729-4ddc-96b0-f4666e69bb0b>

6 *An important element of context to the negotiations was provided by the Steering Committee, which oversaw the concession and gave strategic direction to the project. The NAO's review of the minutes of the Steering Committee indicated the involvement, to varying degrees, of the Minister for Energy and Health and officials from within his Secretariat, the Permanent Secretary (PS) of the Energy division within the Ministry for Energy and Health (MEH), the PS of the Health division within the same Ministry, various officials of Projects Malta Ltd and other outsourced third parties, including the Chief Executive Officer (CEO) BEAT Ltd.*

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

8 *The incumbent Minister for Health and the PS Ministry for Health (MFH) asserted that the MEH-Health was not appropriately consulted or involved in the decision-making process leading to the entry into the contractual framework regulating the concession. On the other hand, the PS Ministry of Tourism (MOT) claimed that certain key stakeholders were intentionally reluctant to cooperate, willing the project to falter.*

9 *Despite the disagreement outlined in the preceding paragraph, the PS MOT and the PS MFH were consistent in their views that the dichotomy that characterised the work of the MEH, with the MEH-Health responsible for the health operations side of the concession and the MEH-Energy responsible for the capital element, contributed to implementation failure. It is with concern that the NAO notes that despite the restructuring of ministerial portfolios, which ought to have shifted the project away from the responsibility of the Hon. Konrad Mizzi, in his various roles as Minister for Energy and Health, Minister within the OPM and Minister for Tourism, this never materialised. MFH never assuming complete control over the project. Instead, **in the period reviewed, the concession remained an unimplementable project, an insurmountable challenge and an irreparable situation for the Government to manage, whose administrative and political weaknesses were all too readily exploited by the VGH.***

10 *Notwithstanding the significant materiality of the project and its undoubted impact on public finances, the NAO noted that the Ministry for Finance (MFIN) also remained a conspicuous absence in the Steering Committee's proceedings. **This Office is of the understanding that failure to consult MFIN regarding a concession conservatively valued at €4,000,000,000 is a gross shortcoming in terms of the financial management of public funds.***

11 *A Negotiation Committee was set up by the Steering Committee and was tasked with compiling the draft contractual framework, negotiating on*

behalf of the MEH, seeking guidance on critical parameters, reporting on progress and seeking authorisation in case of deviations. Chairing the Negotiation Committee was the CEO BEAT Ltd, while a Partner RSM and the Managing Partner Mifsud Bonnici Advocates were its other members.

*12 The Negotiation Committee failed to retain any records of meetings held with the VGH and copies of draft transaction agreements. Failure on all counts in this respect immediately gave rise to the NAO's gravest concerns. This Office maintains that its limited visibility over the process of negotiation that led to the concession of three public hospitals may be attributed to two significant failures. First, that the **Negotiation Committee failed to retain any** documentation relating to its work, a basic premise of governance, central in ensuring transparency and essential in ensuring accountability, particularly in processes of national and economic importance such as this. Second, the Steering Committee was negligent in overseeing the work of the Negotiation Committee, failing to ensure that appropriate records of the latter's involvement in the concession were retained. The NAO deemed this a severe failure in governance.*

13 One role fulfilled by the Negotiation Committee was that of interfacing with other working groups. Several concerns emerge in this respect. The first matter of concern related to the involvement of the MEH-Health in the process of negotiation. While the CEO BEAT Ltd maintained that the MEH-Health was directly involved in setting health service requirements through the technical work stream, the PS MFH contended otherwise. Although the PS MFH could not exclude that the process of negotiation was supported by officials from the MEH Health, he asserted that this was limited, did not include the Ministry's senior management in a coordinated manner and certainly failed to source the Ministry's input in terms of the commercial element of the concession. Correspondence reviewed by the NAO indicated that while in most instances the PS MFH was informed of or copied in key developments taking place, there were a few instances when he was excluded from important exchanges.

*14 **The omission of the MEH-Health from contributing to the negotiation process in a structured, comprehensive, and meaningful manner, particularly in relation to the commercial elements of the contractual framework, was deemed a shortcoming of grave concern to the NAO, one that would have far-reaching impact on the benefits that could be sourced through the concession.***

15 Another matter of concern relates to the role of the technical work stream. While the Chair Negotiation Committee asserted that the technical work stream negotiated directly with the VGH, the CEO GGH and the CEO KGRH denied any direct interaction with the Concessionaire and indicated that they were not aware of having formed part of a committee or structure that negotiated the health service requirements of the hospitals they represented. The CEO GGH and the CEO KGRH recalled being requested

to provide information on the operations of the hospitals that they led; however, they were not provided with any formal appointment in this respect and were not aware that their input was in any way related to the concession. The NAO noted that correspondence reviewed contradicted assertions made by the CEO GGH and the CEO KGRH in testimony provided, particularly in terms of their awareness of and the extent of involvement in the concession.

16 The Negotiation Committee also assumed lead in the negotiation of the commercial elements of the concession. The dearth of information made available to the NAO precludes this Office from establishing an understanding of the work of the Negotiation Committee in this regard.

17 **Noteworthy to the NAO were assertions by the Minister for Health regarding the covert role of the OPM in negotiations held, whereby he maintained that parallel negotiations were held with the VGH by the Minister for Tourism and the Chief of Staff OPM, contending that this situation persisted when he was the Parliamentary Secretary for Health and eventually the Minister for Health. In addition, the Minister for Health noted that contentious issues that arose with the VGH later in the process were at times resolved with the VGH resorting to the intervention of the OPM to push forward its interests, thereby bypassing the MEH-Health and later the MFH. Concerns highlighted by the Minister for Health were corroborated by several other senior MFH officials, including the PS MFH.**

18 The NAO sought to ascertain whether the negotiated contractual framework reflected a deal that corresponded to the objectives set for the project, whether Government secured a good price for the quality of services and assets that were to be provided, and whether the contractual framework fairly allocated risk between the public and private sectors involved in this project. This Office was not provided with any evidence of these important aspects of the concession being considered by the Negotiation Committee.

19 In a Memorandum presented to Cabinet by the Minister for Energy and Health, dated 21 June 2015, the Cabinet was asked, among others, to approve the commencement of the negotiations with the preferred bidder and, eventually, the conclusion of the relative agreements in line with Government's requirements and objectives as outlined in the RfP. The memorandum was approved by Cabinet during meeting 102 held on 23 June 2015.

20 The NAO further enquired as to the process of authorisation that regulated the work of the Negotiation Committee during the process of negotiation with the VGH. The Negotiation Committee maintained that the Committee was not tasked with deciding on matters in relation to the negotiations underway, but merely to ensure consistency between the RfP and that sought by Government through this concession by formulating

*clauses that both parties agreed on. Furthermore, the Negotiation Committee maintained that it had no technical role and that oversight was provided by the Steering Committee. **The NAO objects to the interpretation of the Negotiation Committee of its own role, with decisions regarding the commercial elements of the concession certainly required and undertaken throughout the process of negotiation and contract drafting engaged in with the VGH. The several divergencies noted between the RfP and the contractual framework substantiate the understanding of a Committee that was actively engaged in setting and modifying the terms of the contractual relationship between Government and the VGH.***

21 *On 27 October 2015, Cabinet was then informed by the Minister for Energy and Health that all the main contracts were negotiated. Noted in the minutes of the meeting was that Cabinet agreed that the Minister for Energy and Health would sign the contracts. The relevance of this Cabinet minute is that it was on this basis that the Hon. Konrad Mizzi would be the signatory representing the Government on all subsequent agreements, side letters and addenda entered into by the Government and the VGH, a situation that persisted beyond his tenure as Minister for responsible for health.*

22 *While Cabinet provided a high-level political endorsement of the concession, the NAO enquired whether the Parliamentary Secretary for Health, the Minister for Finance or any other senior public official reviewed the negotiated deal immediately prior to the signing of the contracts to ensure that the project's objectives were met. Although the NAO was informed that such a review was conducted at Cabinet level and that the Minister for Energy and Health presented the entire negotiated deal to Cabinet, concerns in this respect emerge.*

23 *The PS MFIN informed the NAO that the Minister for Finance was only aware of the material that was presented at Cabinet. **The negotiated deal was never presented to MFIN for review purposes prior to its approval and the signing of the relevant contracts.***

24 *Similar concerns were raised by the PS MFH, who informed the NAO that there were **no consultations on the contract or contract terms with the Parliamentary Secretary for Health or any other representative of senior management**, hence endorsement in this respect was certainly lacking. This was corroborated by the incumbent Minister for Health.*

25 *In sum, the NAO is of the opinion that **although Cabinet's authorisation of the negotiated concession was sought and obtained, notable gaps persisted, arising largely from the omission of key stakeholders in the review process. When one considers the health-related nature of the concession and its financial materiality, the failure to comprehensively consult with the MEH-Health and MFIN assumes greater relevance, more so when bearing in mind that one of the principal objectives sought through this concession, that is, improvement in health***

infrastructure without burdening public expenditure was not reached.

321. In regard to the **Services Concession Agreement** and its implementation, the Auditor General has the following to say:

27. Of concern to the NAO was that Cabinet's authorisation for entry into the two Side Letters to the SCA was sought weeks after these were signed. The two Side Letters served to extend the date by when financing by the VGH was to be secured. In addition, and of grave concern to the NAO, was that the Addendum to the SCA, despite making crucial amendments to the dates by when the concession milestones were to be achieved, was not authorised by Cabinet. Government's failure to refer important contractual changes to Cabinet was a recurring shortcoming identified by the NAO, with the Side Letter to the Transaction Agreements dated 19 May 2016 and that dated 15 September 2016 not referred. The final extension to financial close afforded to the VGH on 29 December 2017 was similarly referred to Cabinet after being granted, that is, on 9 January 2018.

...

29. Of grave concern to the NAO was that the requirement for the VGH to submit the designs for all the sites to the HCC for approval by not later than 60 days from the effective date was not adhered to. This situation persisted at the point when the shares of VGH Ltd were transferred by its parent company Bluestone Investments Malta Ltd to Steward Healthcare International Ltd on 16 February 2018. Therefore, during the period within which the concession was assigned to the VGH, the designs for the sites were not submitted.

...

32 *The NAO established that, in the period under review, that is, up to end February 2018, the only concession milestone that was achieved, albeit late, was that relating to the handover plan, which was submitted to the Government in June 2016. **Serious reservations regarding the feasibility of the concession milestones emerge, compounded no less by the VGH's serial inability to secure financing.** In the NAO's understanding, the milestones as contracted in the SCA were naught but false promises and hollow commitments on the part of the VGH. **Responsibility in this respect falls squarely on all Government representatives involved in this dubious concession, in the case of some, evidence of the naivety on their part, in the case of others, indicative of gross negligence in fulfilling their responsibilities of office.***

33 *Failure to achieve the concession milestones by the VGH by their stipulated dates was deemed to be a rectifiable concessionaire event of default in the SCA. This Office was informed that a number of such events of default were identified and addressed through continuous discussions with the aim to seek a way forward and that guidance from Cabinet was sought in these instances. When requested to provide documentation in relation to rectifiable concessionaire events of default registered with respect to the VGH, the MFH indicated that the Government opted to refrain from*

registering such events of default to create space for discussion on potential solutions.

34. *The limited visibility of the nature and outcome of the rectifiable concessionaire events of default curtailed the NAO's ability to establish a comprehensive understanding of the measures, if any, taken by the Government to address the VGH's failure to achieve the concession milestones by the stipulated dates. Assuming that the registered rectifiable concessionaire events of default related to the concession milestones, this should have triggered a series of measures, including an allowance for a period of address of the default through a rectification programme and, should the VGH fail to rectify the default, the Government would step in. This stepping in of Government would imply that Government would assume direct responsibility for rectification of the default or breach, apply certain penalties, charge a rectification cost that was to be increased by 10 per cent as a penalty, and be entitled to call on the performance guarantee. **None of these measures were availed of by the Government despite the failures of the VGH to achieve key concession milestones by 30 June 2017.***

35. *Concerns regarding the failure to achieve the concession milestones persisted until 30 June 2017, for on this date, the Government and the VGH entered into the Addendum to the SCA, which amended the dates by when the concession milestones were to be achieved. The key change in this respect was that the target dates for completion of the concession milestones were no longer specified but were now dependent on the issuance of the relative construction permit. This contractual amendment effectively reversed the default status of the VGH with respect to certain concession milestones and extended the period within which it was to achieve others. **The NAO is of the opinion that the design of the concession milestones, as regulated in the SCA and the Addendum to the SCA, rendered Government powerless in ensuring their achievement.***

36. *The SCA stipulated that it was the Concessionaire who was to determine milestone achievement failure penalties and incorporate them in its agreement with the engineering, procurement and construction (EPC) contractor. Furthermore, in the case of any milestone failure, the Concessionaire agreed to pay 25 per cent of the penalties received from the EPC contractor to the Government. The NAO's gravest concerns emerge when considering the provisions stipulated in the SCA as means of redress for circumstances when the concession milestones are not achieved. This Office deemed the provisions of the SCA in this respect as grossly inadequate, failing to safeguard the interests of Government in the all too real scenario of a Concessionaire that failed to deliver that contracted. **Although the Addendum to the SCA effectively rendered that which was in default as now in order, the NAO is of the opinion that through this amendment, Government relinquished control over the timely completion of the concession milestones. This Office deemed the necessity of needs, Government failed to appropriately explain the bases of the onboarding process the of Government and the KGRH as part of one project.***

37. *The SCA regulated the measures that were to be followed in case of the termination of the Agreement and applicable termination payments*

arising therefrom. Several circumstances that allowed for the Government to terminate the SCA prior to the expiry of its term were outlined. Under all cases of termination triggered by the Government, the termination payment was to consist of €100,000,000 and the sum of the lender's debt incurred. Other scenarios that allowed for termination of the SCA related to non-rectifiable events of default committed by the VGH. Of note to the NAO was that in the event of this kind of termination, the Government would assume the lenders' debt in full and extinguish it. **The assumption of this risk by Government heightens the importance of the selection of a concessionaire of sound financial and technical standing and exacerbates the many failures of the VGH to match this standard.**

38 A key element of the SCA was the inclusion of a list of conditions precedent that were to be met or waived for the attainment of the effective date. One of the conditions was for the VGH to provide evidence that the primary lenders and financing agreements consented to by the Government were in place, by providing a signed copy thereof. During the period under review, the VGH did not satisfy this condition, with Government providing the Concessionaire with successive waivers that allowed this scenario to persist.

39 Of concern to the NAO was that stated by the Minister for Health, who in submissions to this Office noted that the successive extensions authorised by Cabinet indirectly endorsed the delays in works, which works could only commence when the VGH secured financing. **The MFH highlighted that it was evident that the VGH was facing financial difficulties, and at a point in time it became clear that the Concessionaire was insolvent with several garnishee orders issued against it, an accumulation of €12,000,000 in operating losses and €32,000,000 due to creditors, the failure to provide the Ministry with audited accounts and failure to effect payments for tax and National Insurance dues all indicators of its dire situation.** Notwithstanding this, the MFH was concerned about the impact that litigation would have had on the concession, particularly in terms of the anticipated adverse effect such litigation would have had on the service user. In addition, the Ministry highlighted the €100,000,000 liability payment in case of a non-rectifiable event of default as an additional barrier to terminating the contract.

40 In the NAO's understanding, the inability to secure financing by the VGH represents the pivotal shortcoming on which rested all subsequent failures registered in this concession by Government. Without financing, all commitments regarding improvements to be made in terms of infrastructure and services were rendered impossible to achieve, nothing short of empty and unachievable commitments on the part of the VGH. **The failure of the VGH to deliver on its commitments was mirrored by Government's lack of necessary action in attending to the evident inadequacies of the Concessionaire. Instead, the Government's representatives allowed for waiver after waiver of the requirement to secure financing, thereby perpetuating the failure that this concession came to represent. In effect, the origin of this situation can readily be traced to the grossly erroneous selection of the VGH as the concessionaire, whose lack of financing and technical expertise was evident at the selection stage of the concession.**

Graver still was that the Government's representatives were systematically granting waivers to the VGH of the requirement to secure financing without prior referral to Cabinet for authorisation. In a consistent manner, the Hon. Konrad Mizzi, in his various capacities as a Minister of Government, first entered into agreements or commitments with the VGH to extend financial close, then sought Cabinet's approval.

322. In regard to the **Health Services Delivery Agreement**, the Auditor General had the following concerns and comments:

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

323. In regard to the **Labour Supply Agreement**, the Auditor General made the following consultations:

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

...

92. In sum, of grave concern to the NAO is the lack of planning, coordination and stakeholder involvement noted in relation to what certainly constitutes a major component of the operations of the hospitals, that is, the workforce required to deliver health services. This resulted in unnecessary conflicts and disagreements, the mismanagement of state resources and ultimately an

unnecessary additional financial burden imposed on the Government – albeit by itself – due to agreements hastily concluded without obtaining the necessary advice and relevant information prior to entry into the contractual obligations imposed by the LSA.

324. In regard to **Emphyteutical Concession** that is the subject of this cause, the Auditor General had the following to say:

*94. The NAO sought to understand the mismatch between the 30-year concession period and the potential 99-year title granted over the sites. This Office's concerns regarding the mismatch between the concession period and the duration of the temporary emphyteusis are twofold. The first concern relates to the services provided to the public from the SLH site, with uncertainty prevailing as a result of the control exclusively exercised by the VGH over its use of the site in this respect. The second concern is connected to the use of the site for medical tourism within the extended term. Although the Minister for Health, the PS MOT and the Negotiation Committee maintained that use of the site in this manner by the VGH was in the Government's interest to promote medical tourism, **the NAO contends that the provisions of the Emphyteutical Deed are unnecessarily broad.** This Office is of the understanding that the restrictions imposed on the VGH in the Deed may be broadly interpreted by a court of law and if that were to happen it would defeat the intended objectives of Government.*

325. The Auditor General also comments on the financial positions of Vitals Global Healthcare Group, and makes the following observations and concerns:

125 Of utmost concern to the NAO was that the VGH failed to submit any of its companies' audited financial statements during the period under review. The 2015, 2016 and 2017 financial statements of VGH Ltd, VGH Management Ltd and VGH Assets Ltd were eventually submitted to the Registrar of Companies during the first quarter of 2020, after the change in ownership of the companies. The failure to submit the required records prevented Government from undertaking appropriate and adequate analysis of the VGH's financial situation. The VGH's failure to submit the required financial reports also precluded the Government from ascertaining that the concession was being operated sustainably, that the VGH was financially able to honour its obligations, and that public funds were being put to appropriate use, thereby reducing the risk of fraud and misappropriation.

126 Of great concern to this Office were the statements made in the independent auditor's reports for 2016 and 2017 with respect to the consolidated statements for VGH Ltd, which without qualifying the audit opinion, expressed concerns and cast significant doubts on the VGH's ability to continue as a going concern. In the 2016 report, the auditor drew attention to a material uncertainty related to going concern. The consolidated financial statements indicated that the VGH group incurred a net loss of €6,066,750 during the year ending 31 December 2016 and, as at that date, it had a negative working capital of €8,940,817. The auditor noted that these events and conditions indicated that a material weakness existed that could cast a significant doubt on the VGH group's ability to continue as a going concern.

In the 2017 report, the auditor drew attention to a note in the financial statements that indicated that the VGH group's total liabilities exceeded its total assets by €27,382,043. This, along with other conditions mentioned in the note, indicated the existence of a material uncertainty which could cast significant doubt on the VGH group's ability to continue as a going concern.

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

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

129 Of grave concern to the NAO were the futile attempts made by this Office to meet with the Hon. Konrad Mizzi. Despite several requests for meetings sent by this Office, these remained unaddressed. The gravity of this failure was rendered immediately evident in this report through the pivotal role played by Hon. Mizzi in this concession. In the period being reported on, he was the minister responsible for the health portfolio at the point when negotiations with the VGH commenced; was a member of the Steering Committee, which Committee was tasked with overseeing the concession as a whole; and was the signatory representing Government on all contracts entered into with the VGH, bar the Emphyteutical Deed. This latter point assumes greater relevance when one considers that Hon. Mizzi was authorised by Cabinet to keep on representing the Government even when he no longer was responsible for the health portfolio. Aside from constituting a limitation to the audit, Hon. Mizzi's failure to attend to the several demands made by the NAO constituted a serious failure on his part in terms of the level of accountability expected of a former

minister of Government and in terms of the standard of good governance that ought to have characterised a project as material and as important to the national health services as was this.

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

XXIV. Robert Vella and Dr Marisa Grech, as representatives of the Lands Authority.
(Vol X - fol 2766, 2767)

326. It transpires from their one-page affidavits, Robert Vella, as Chief Executive of the Lands Authority, and Dr Marisa Grech, as Chief Officer of the Contracts Section at the Lands Authority, both maintained that, by means of Legal Notice No. 94 of 2016 and Legal Notice 95 of 2016, the Authority transferred every right and obligation to Malta Industrial Parks Limited, now INDIS Malta Limited, that it had on the land that was transferred to the respondent Vitals companies.

XXV. Mario Galea (Vol XI - fol 2775 to 2789)

327. In his testimony given on 15 March 2022, Mario Galea testified that between January and June 2016, he was CEO of Malta Industrial Parks Limited, as it was called at the time, where he stated that he found the project completed and approved when he took up his position. Nevertheless, he stated that he had proceeded to engage an auditing firm, that is RSM, in order to evaluate the granting of the land to Vitals and whether this was of benefit to the country in terms of employment.

328. In the report presented on 16 March 2016, (Vol XI - fol 2791 to 2796), that is, one day prior to the signing of the Contract that is the subject of this cause, the auditors described the project as follows.

The Project is expected to involve the capital expenditure of €190.3 million of which €116.6 million will be allocated to the Gozo General Hospital, €48.9 million to Saint Luke's Hospital, €4.8 million to Karin Grech Rehabilitation Hospital and a further €20 million of medical equipment. The

Project will involve:

- *construction of an additional 225-bed acute facility at Gozo General Hospital, with 125 beds to be allocated to the National Health Service;*
- *upgrade of the existing hospital Gozo General Hospital to convert it into a 175 bed long-term and rehabilitation centre;*
- *construction of a medical college to accommodate the Barts Medical College at Gozo General Hospital;*
- *renovation of Saint Luke's Hospital into a 300-bed hospital, with 80 rehabilitation care beds provided to the National Health System;*
- *establishment of 12 dermatology beds and clinic at Saint Luke's Hospital;*
- *refitting of an existing building at the Saint Luke's Hospital site to support a nursing institution;*
- *promotion of medical tourism in the areas of cardiology, orthopaedic and trauma with a capacity of 320 beds (100 at Gozo General Hospital and 220 at Saint Luke's Hospital);*
- *the operational administration of the hospitals for the duration of the concession period.*

Effective operation of all facilities is expected to commence at the beginning of 2018. The successful bidder acknowledged that health tourism is still in its infancy in Malta, but expects to build an international competitive advantage in this field in line with the intentions of Government policy based on Malta's traditional advantages in tourism and as a business hub, as well as the possibility of offering price-competitive services. The successful bidder aims to occupy around 85,000 bed days from medical tourism by 2021.

In its response to the request for proposals for the services concession for the redevelopment, maintenance, management and operation of sites at the Government property, the successful bidder also indicated a number of wider economic benefits from its activities, namely a reduction in the inherent seasonality and cyclicity of tourism, diversification of tourism consumer base, the potential to attract related industries, and the retention of medical skills in Malta.

The project also envisages the development of a medical College and supporting teaching hospital, with the involvement of Barts and the London School of Medicine and Dentistry. The medical college will provide an array of under-graduate and post-graduate courses, together with research facilities, for around 300 students. The medical college and teaching hospital will be operated on a commercial basis.

329. The Auditors appointed by Malta Industrial Park Limited revealed that they undertook the following as their remit:

For the purposes of this engagement, we have performed the following procedures;

- We reviewed a report entitled “Response to the request for proposals for the services concession for the redevelopment, maintenance, management and operation of sites at Saint Luke’s hospital and Karin Grech Rehabilitation Hospital and Gozo General Hospital” dated 19th May 2015 as submitted by the successful bidder and the underlying financial data;*
- we reviewed the requirements of Cap. 268;*
- we reviewed the requirements of Cap. 325; and*
- we performed a high-level economic review of the potential benefits that the proposal which was submitted by the successful bidder would contribute to the economy and create an adequate number of jobs.*

*Our review of the report and underlying financial data provided by the successful bidder did not constitute an audit or been carried out in accordance with auditing or other standards and practices generally accepted in Malta or other jurisdictions (‘Audit Procedures’) and accordingly should not be relied upon as if it has been carried out in accordance with those standards and practices. **We are not providing any audit opinion or any assurance opinion whatsoever on the completeness, accuracy and validity of the financial data of the underlying proposal. We have not audited or reviewed in detail the assumptions made by the successful bidder in preparing the response to the request for proposal.** (emphasis by the Court) Our review, was limited to matters which we have identified that would appear to us to be of significance within the context of our scope and we have relied upon the information as provided.*

330. After making their valuations based on the declarations of Vitals company and the operation of medical tourism as promoted by the said Vitals, this firm proceeded to draw the following conclusions:

It is our view that based on the procedures performed as set out in the scope of work and our findings set out above, the proposed transfer of land for the services concession for the redevelopment, maintenance, management and operation of sites at a) Saint Luke’s Hospital and Karin Grech Rehabilitation Hospital in Guardamangia and b) Gozo General Hospital in Victoria, Gozo to Vital Global Healthcare Limited constitutes a transfer of land for industrial projects and that this Project would benefit the country’s economy and should create an adequate number of jobs.

331. He maintained that on the basis of that report, negotiations were made on the part of the Lawyers of INDIS Malta Limited and subsequently, following these negotiations, the final agreement was signed.

332. In regard to the fact that no audit was undertaken of Vitals company by RMS Malta, the witness stated that:

My work consisted to ensure ... I am saying this as an MIP ... as an MIP I wanted to ensure that this project fell within the eligibility condition of the Lands Act. That was my aim. The other matters were not in my remit.

XXVI. **Peter Mamo** (Vol XI - fol 2797 to 2804)

333. In his testimony given on 15 March 2022, Peter Mamo revealed to the Court that at the time of the award of the contract, he was the Director of Lands, which position covered the position of Commissioner of Land.

334. He revealed that on **9 February 2015**, as Director General (Lands), he received a letter from the Executive Chairman of Malta Enterprise, Dr Mario Vella, sent with the approval of the Minister for the Economy Dr Christian Cardona which he had signed on 9 February 2015 and Dr Michael Falzon, Parliamentary Secretary for Planning which he had signed on 12 February 2015, where he was requested the following in connection to the **Gozo Hospital**: (fol 2830)

Reference is made to the site hatched in red on the attached plan having reference GGH002-M00. The site in question refers to land at Victoria, Gozo, having an area of circa 72483 sq. m.

The land in question has been identified for use as part of the medical hub intended to be created in Gozo. Malta Enterprise is therefore requesting that the Government Property Department undertakes the necessary procedures to enable the transfer of the said site to Malta Enterprise.

Your urgent attention to the matter is cordially solicited.

335. He stated that on **16 March 2015**, as Commissioner of Land, he had received a request from the Chief Executive Officer and Deputy Chairman of Malta Industrial Parks Limited, Joshua Zammit, sent with the approval of the Minister for the Economy Dr Christian Cardona which he had signed on 26 May 2015 and Dr Michael Falzon, Parliamentary Secretary for Planning which he had signed on 18 May 2015, where he was requested the following in connection to the **Gozo Hospital**: (fol 2805)

Reference is made to the site shown bordered in red on the attached plan having reference GGH001003A. The site in question is located at Victoria, Gozo and has an area of circa 72,974sq m.

The site in question has already been requested for allocation to Malta Enterprise by letter dated 9th February 2014 however it has since been decided by agreement between Malta Enterprise (ME) and Malta Industrial Parks Limited (MIP) that the site should be transferred to MIP. ME's withdrawal of its request is included below. In view of the foregoing MIP is requesting that the said site be released by the Government Property Department and

transferred to MIP, in its free and unencumbered state, in terms of Chapter 169 of the Laws of Malta.

The Government Property Department is therefore kindly requested to enrol the relative plan showing the site indicated on plan GGH001 003A and forward same, together with a copy of the deed of enrolment, to MIP such that MIP may proceed with the publication of the appropriate legal notice to have the land in question transferred to MIP.

Your urgent attention to the matter is cordially solicited.

336. This letter was also countersigned by Dr Mario Vella, as Executive Chairman of Malta Enterprise.
337. He also stated that, subsequently, on **6 April 2015**, as Commissioner of Land, he had received an additional request, this time from the Chairman of Malta Industrial Parks Limited, Anthony G Zahra, sent with the approval of the Minister for the Economy Dr Christian Cardona which he had signed on 26 May 2015 and Dr Michael Falzon, Parliamentary Secretary for Planning which he had signed on 22 May 2015, where he was requested the following in connection to **St Luke's Hospital and Karin Grech Rehabilitation Hospital**: (fol 2807)

Reference is made to the site shown bordered in red on the attached plan having reference STL 010_M01.dwg. The site in question measures 62,450 sq. m circa and refers to St Luke's Hospital buildings and grounds including adjacent car parks and Karin Grech Rehabilitation Hospital.

It has been decided by Government that the site should be transferred to Malta Industrial Parks Limited (MIP) and MIP is therefore requesting that the said site be released by the Government Property Department and transferred to MIP, in its free and unencumbered state, in terms of Chapter 169 of the Laws of Malta.

The Government Property Department is therefore kindly requested to enrol the relative plan showing the site indicated on the attached plan and forward same, together with a copy of the deed of enrolment, to MIP such that MIP may proceed with the publication of the appropriate legal notice to have the land in question transferred to MIP.

Your urgent attention to the matter is cordially solicited.

338. Together with this letter, there was also attached a Clarification Document that was issued by Projects Malta Limited upon a request made by Vitals company during the proposals period on the basis of the RfP that had been issued on 27 March 2015.
339. He maintained that subsequently Legal Notice 94 of 2016 had been published on 18 March 2016, which notice subsequently had to be re-issued by means of Legal Notice of 2016 on 22 March 2016 since in the plan there was a piece of land that

included an Enemalta sub-station that should not have been included.

340. He insisted that he was not involved in any way in regard to the use and development of the land and its necessity, since all he had to do was to transfer his powers as Commissioner of Land to Malta Industrial Parks Limited, and they would handle everything thereafter.

CONSIDERATIONS

Basis of the Action

341. After this Court drew up a summary of all the witnesses and documentation that it deemed relevant to today's cause and that were filed and presented before it during the hearing process of evidence that were held before this Court, now it is necessary that this Court delves into the demand made by the applicant and the defence raised by the various respondents in the cause.

342. It is an undisputed fact that Dr Adrian Delia is a Member of the House of Representatives, where, at the time when he filed this cause, he was the Leader of the Opposition, and today he is still a Member of the House of Representatives.

343. It transpires, although not expressly written in the content of the application initiating proceedings, but certainly clarified in the hearing of the witnesses and in the detailed submissions filed by his skilful legal consultant, that this action is based on Article 33(2) of Cap. 573 of the Laws of Malta.

344. Article 33 of the Government Lands Act, that is Cap. 573 stipulates the following:

(1) Any disposal of land, to which article 31 applies, which was disposed of differently from the provisions of that article, shall be null and void.

(2) The nullity of a disposal made in contravention of the article aforesaid may be demanded by the parties involved in the disposal and also by the Attorney General or by any person who is a member of the House of Representatives at the time of the demand before the Civil Court, First Hall.

(3) The effects and consequences referred to in articles 541 and 543 of the Civil Code shall apply to whosoever acquires land in violation of article 31 of this Act.

345. It transpires, therefore, that the applicant, as a Member of the House of Representatives, availed himself of a right granted to him, as a representative elected by the people, in order to contest a decision taken by the Government of the day and the competent Authorities that fall under the control of the said Government, with the aim of this decision being cancelled.

Defences

346. It transpires that, in this cause, the applicant brought proceedings against various persons, that is, the following:

- **The Prime Minister of Malta** of the time when this cause was initiated, Dr Joseph Muscat, whose position was subsequently assumed by Dr Robert Abela on 13 January 2020.
- **The Attorney General.**
- **The Chief Executive of Malta Industrial Parks Limited**, subsequently known as INDIS Malta Ltd.,
- **The Chief Executive of the Lands Authority** who assumed the functions of the Commissioner of Land.
- **The Chairman of the Board of Governors of the Lands Authority.**
- **Vitals Global Healthcare Assets Limited**, subsequently called Steward Malta Assets Limited.
- **Vitals Global Healthcare Limited**, subsequently called Steward Malta Limited.
- **Vitals Global Healthcare Management Limited**, subsequently called Steward Malta Management Limited.

347. It transpires that although the various respondents presented separate and distinct objections on the basis of their position and involvement in the cause, it appears that, principally, the objections can be summarised as follows:

- **That they are not the legitimate opposing party in this cause** - this was raised by all the parties except for the Vitals companies.
- **That the applicant has no judicial interest in this cause because the action could not be initiated pursuant to Article 33 of Cap. 573.**
- **That the applicant was not a party to the contract that is being disputed, and therefore he has no judicial interest to dispute it on the basis of the principle “*Res inter alios acta*”.**
- **That the service contracts are distinct and separate from the emphyteutical concession contract.**
- **That there was no breach of the conditions as he alleged.**

348. It also transpires that the respondent Vitals companies, subsequently Steward, and INDIS Malta Ltd also raised a preliminary objection by way of formality, that is,

that, in breach of Article 156(1)(a) of Cap. 12, **there was no “*statement which gives in a clear and explicit manner the subject of the cause.*”**

349. The Court shall proceed to give its considerations on the basis of the various defences presented by the respondents, as summarised above, but not necessarily in the chronological order as described above:

A. Nullity of Sworn Application because it is in breach of Article 156 of Cap. 12.

350. The Court starts by stating that it is true that formalism is an essential part of judicial proceedings, such that in their absence, the Courts are faced with complex and inappropriate situations that may lead to the Court not functioning efficiently and Justice and Merit may not be done as expected from it.

351. Nevertheless, this does not mean that such formalism should be used stifflingly in order to hinder and stop proceedings that would have been initiated before it legitimately.

352. This is being stated because, in this cause, whilst the applicant, in his application initiating proceedings failed to indicate in writing that the basis of his action was Article 33 of Cap. 573, which basis of action is eventually indicated, both in his testimony as well as in his submissions, his action appeared evident from the applicant’s whole substance – that is, the cancellation of the contract granted to the Vitals companies on the basis of a breach with the power granted to him in Article 33 of Cap. 573.

353. Therefore, this objection raised by the Vitals companies, subsequently, Steward, and the company Malta Industrial Parks Limited, subsequently INDIS Ltd, does not merit being admitted.

B. That the service contracts are distinct and separate from the emphyteutical concession

354. The Court here begins by noting that it is true that this defence is not one of the first that was presented by the various respondents, and in fact it was an objection that was raised principally by the Prime Minister and the Attorney General, but this Court points out that it is appropriate that it should first consider and decide this defence since it is relevant, eventually, to the other defences raised by the same respondents.

355. It transpires that in the applicant's demand, particularly his second demand, he requests the Court to declare and decide that the Related Instruments form an integral part of the emphyteutical concession that he was disputing herein.

356. It transpires that the reason for this demand is evident for this Court – the applicant is contending that there were various breaches of conditions in the Related Instruments, wherein these breaches therefore should be considered as a breach of the Emphyteutical Concession that was granted to the company Vitals Global Healthcare Assets Limited, with the result that therefore his demand is considered, and possibly, admitted in regard to the Emphyteutical Concession as well as the various Related

Instruments.

357. For all the collective evidence, as reproduced before this Court, it appears that there were three Related Instruments, that eventually led to the signing of the Emphyteutical Concession, which are the following:

- **Service Concession Agreement** signed on 30 November 2015. (fol 1884 to 1954)
- **Health Services Delivery Agreement** signed on 30 November 2015. (fol 389 to 463)
- **Labour Supply Agreement** signed on 8 January 2016. (fol 464 to 470)

358. It also transpires that all these agreements were all changed several times after they were signed.

359. It transpires that the first agreement that was concluded and that was signed after Vitals company was selected was the **Service Concession Agreement signed on 30 November 2015**, which said the following in its introduction: (fol 1888)

(4) The Government of Malta recognises that the involvement of an operator in the private sector, of sufficient levels of technical competence, fitness and probity with operational and infrastructural experience and financial soundness, is crucial to fund the necessary developments and operating the healthcare facilities in realising the abovementioned policy objectives;

(5) The Government of Malta wants to undertake a substantial capital redevelopment project with the aim of developing existing national healthcare resources and intends to implement such project through the grant of the Concession to the Concessionaire;

(6) By granting the Concession the Government of Malta has developed a framework for the development and eventual operation of land, buildings and existing improvements thereon at three specific sites:

- (i) St Luke’s Hospital [“SLH”];*
- (ii) Karin Grech Rehabilitation Hospital [“KGRH”]; and*
- (iii) Gozo General Hospital*

[“GGH”] (collectively the “Sites”);

(7) The dual policy objectives of the Government of Malta for the redevelopment of the Sites and granting of the Concession are:

- (i) *the redevelopment, maintenance, management and operation of the Sites; and*
- (ii) *the supply of Healthcare Services by the Concessionaire to the Government of Malta for the benefit of End-Users; and*
- (iii) *the development of the local service offering to be able to target a regional market of prospective end-users on an elective and non-elective basis.*

(8) *The Parties are desirous that this Agreement will, inter alia, detail the intended Concession, particularly the re-development and improvement programme which the Concessionaire will undertake on the Sites;*

(9) *This Agreement provides for an organised assumption of day-to-day management and administration of the Sites in the immediate term and for the remainder of the Concession Period;*

(10) *The grant of this Concession requires the Achievement of key Ancillary policy objectives of the Government of Malta including the construction of*

- (i) *A medical school to be operated and managed by QMUL Malta; and*
- (ii) *a university-level educational institution offering teaching and qualifications in nursing to be operated and managed by an operator which is yet to be identified by the Concessionaire following consultation with the Government of Malta;*
- (iii) *To develop and create state of the art research and development facility for the health sector;*
- (iv) *To construct and operate a Regional Primary Care Hub (Health Centre) at GGH.*

(11) *This Concession is being granted pursuant to a competitive award process which has identified the Concessionaire as the most suitable candidate to develop and manage the Sites for the purposes of providing the healthcare services identified in recital (7);*

(12) *This Concession shall be granted for a period of 30 (thirty) years in the manner detailed in this Agreement;*

(13) *The Government of Malta is granting, in the manner provided by and subject to the conditions outlined in this Agreement*

(i) *the Concessionaire rights to exploit the provision of healthcare and ancillary services from the Sites, both to the Government of Malta and third parties;*

(ii) *the AssetCo real rights over the Sites, to be granted in terms of the provisions of, and in full compliance with, the Disposal of Government Land Act and pursuant to a public deed, to enable it to provide the intended services;*

In consideration for:

- (i) *The obligation to re-develop the Sites;*
- (ii) *The payment of ground rent in respect of the Sites;*
- (iii) *The obligation to maintain and invest in the Sites for the duration of the Concession.*

(14) *It is not the purpose of this Agreement, nor is it the intention of the Government of Malta to compensate the Concessionaire for the development and ongoing maintenance of the Sites;*

(15) *During and after the Sites have been re-developed to the standards required by this Agreement, the Concessionaire will be required to provide consistent, reliable and Healthcare Services of the standards required in terms of the Health Services Delivery Agreement*

(16) *The Government of Malta will, for the duration of the Concession, be acquiring services to complement the existing public healthcare framework;*

(17) Concurrently with this Agreement, the Government of Malta and the Concessionaire are entering into the Healthcare Services Delivery Agreement and the Labour Supply Agreement and, within the time frame provided in Clause 4, the Government of Malta and the AssetCo will enter into the Emphyteutical Deed(s).

360. It transpires that in Clause 4 of the same Services Concession Agreement, the following is stipulated:

As of the Effective Date, the GoM and the AssetCo will enter into the Emphyteutical Deeds whereby GoM is granting to the AssetCo, by title of temporary emphyteusis, the Sites 'tale quale' and in their current state and condition for their use by the AssetCo and/or Concessionaire, as may be applicable, for the provision of the Concession Services and the Healthcare Services under the Concession.

361. It transpires that by means of an **Addendum to Services Concession Agreement** signed on 30 June 2017 (fol 1957), Clause 4 was amended to read as follows:

“The GoM and the AssetCo will enter into the Emphyteutical Deeds whereby GoM will grant to the AssetCo, by title of temporary emphyteusis, the Sites ‘tale quale’ and in their current state and condition for their use by the AssetCo and/ or the ManagementCo, as may be applicable, for the provision of the Concession Services and the Healthcare Services under the Concession.”

362. It appears evident from the writing of the Services Concession Agreement that the signing of the Emphyteutical Concession was a pre-requisite, that is, *sine qua non* for the whole agreement, which agreement comprehensively included also the health services agreement, that is, the Health Services Delivery Agreement, as well as the agreement that contemplated the workers engaged in this project, that is, the Labour Supply Agreement – without the Emphyteutical Concession, none of the above-mentioned Agreements could be implemented.
363. It is evident in fact, from the whole agreement, that without the Emphyteutical Concession, there could be no Concession agreed with Vitals company – the Emphyteutical Concession was considered essential for the implementation of the whole project intended by the Government and granted to Vitals.
364. Therefore, with the same logic applied by the parties, the three Related Instruments that were drawn up **prior** to the Emphyteutical Concession should undoubtedly be considered as an intrinsic part of the Emphyteutical Concession.
365. This is being stated since it is evident and implicit that the Emphyteutical Concession was granted to the company Vitals Global Healthcare Assets Limited **SOLELY** in view of the other above-mentioned Related Instruments. This also means that the Emphyteutical Concession cannot be considered as separate and distinct from the other agreements, as the Prime Minister and the State Attorney insist, but it should be considered and counted together with the other contracts, that is, the above-mentioned Related Instruments.
366. It is obvious that, in the event that there is a breach in one of the Related Instruments that leads to its termination, this leads to the assets and rights given to Vitals company, now Steward, in order to implement what it was obliged to undertake in the Related Instrument, that is, the exclusive use through an emphyteutical contract of a property intended for health purposes, that these should be terminated as well.
367. The Court also notes that it appears evident that the Emphyteutical Concession is intrinsically linked to the Related Instruments, such that, in clause 4.3.1 of the Emphyteutical Contract itself, the following is stipulated:

4.3.1. The object and purpose of this Emphyteutical Deed is the grant by the Grantor to the Grantee by title of temporary emphyteusis of the Sites ‘tale quale’ in their current state and condition for the purpose of the Grantee procuring the Development Obligations thereon in accordance with the provision of this Deed and for the sole use of the Sites for the provision of

healthcare and medical services and ancillary and related services, including the services envisaged in the Services Concession Agreement.

368. In regard to termination, the Court note that the said Emphyteutical Concession, in Clause 4.8, stipulates that:

4.8.1 The Grantor may terminate this Emphyteutical Deed upon the occurrence of any of the following events:

...

(ii) if at any time the Grantee fails to use the Sites or any part thereof for the purposes stipulated in clause 4.3.1.

369. Having taken all this into consideration, therefore, taking into account the fact that the Emphyteutical Concession was an *intrinsic part* of a series of different agreements, referred to as Related Instruments that altogether would lead to the project implementation that the Government intended for the company Vitals to implement, this means that the conditions and obligations assumed by the parties, both the Government of Malta, as well as the Vitals companies, in the various agreements that were concluded, should be considered as forming an **integral part** of the temporary emphyteutical concession of 22 March 2016 done in the records of Notary Dr Thomas Vella.

370. Therefore, the **Second demand** of the applicant warrants to be admitted.

C. That the applicant has no judicial interest in this cause because the action could not be initiated pursuant to Article 33 of Cap. 573.

371. All the respondents raised the defence that the applicant did not have the judicial interest to raise this cause, that he made on the basis of Article 33 of Cap. 573, where they all maintained that any action that could have appertained to the applicant, as a Member of the House of Representatives, was one that he could only employ in order to dispute the transfer itself, in the event that any one of the conditions established in Article 31 of Cap. 573 was not respected.

372. The respondents, in fact, insist that the applicant is basing his cause, and therefore is demanding the cancellation and invalidity of the emphyteutical concession, on the basis of the fact that there was a contractual breach after the transfer had taken place, which alleged breach, the respondents contend, in itself means that the transfer had already taken place and was concluded, and therefore, the applicant, as Member of the House of Representatives, would have lost the right to contest such a transfer. It is therefore for this reason that the respondents insist that the applicant's demand cannot be considered since, as they contend, it is based on a contractual breach and not on the transfer in itself, which transfer is governed according to Article 31, which fact therefore means that the applicant could not proceed with his action on the basis of Article 33 of Cap. 573.

373. The applicant, on his part, maintains that, on the basis of the principle ‘*fraus omnia corrumpit*’, once it is established that the basis for granting the contracts to the company Vitals was vitiated by deceit and vice, that means that, as the people’s Representative, he had the duty and obligation to ensure that the obligations assumed contractually were observed and, in the event that this does not take place, take the appropriate steps in order that the relative contracts are revoked.

374. He also maintained that it was the obligation of whoever was involved in the transfer, as well as of the Attorney General, to request the nullity of the emphyteutical contract, in the absence of such an action, it rested on him, as member of the House of Representatives, to make the demand for the declaration of nullity of the transfer.

375. The applicant maintains that, pursuant to clause fifteen (15.1) of the Service Concession Agreement.

“15.1 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 so however called of its shares or the shares of its subsidiaries without the express prior written consent of the GoM.”

376. He insists that, since the so-called Completion Date never actually occurred due to non-fulfilment by the company Vitals, therefore, the transfer of the share of the company that benefited from the emphyteutical concession, that is, Vitals Global Healthcare Assets Limited, to Steward should have never taken place, with the result that the effected transfer is null and rescindable.

377. The Court carefully considered all the documentation exhibited before it and noted the following:

- the company Vitals Global Healthcare Assets Limited, now called Steward Malta Assets Limited, has the company Vitals Global Healthcare Limited, now called Steward Malta Limited, as its sole shareholder.
- The company Vitals Global Healthcare Limited, when incorporated on 13 May 2015, had the company Bluestone Investments Malta Limited as its sole shareholder.
- On 19 February 2018, the Malta Business Registry was informed, by means of Document Form T thereby submitted (fol 658), that on **16 February 2018**, 1,140 shares that it had in the company Vitals Global Healthcare Limited were transferred to the company Steward Healthcare International Limited whilst 60 shares that it had in the company Vitals Global Healthcare Limited were transferred to Ashok Rattehalli.

- It transpires therefore that on 16 February 2018, that is, less than two years from the signing of the emphyteutical concession, the shares of the company Vitals Global Healthcare Assets Limited were transferred to third parties.
- It transpires that, according to the above-mentioned agreement, that is, the Services Concession Agreement, no share transfer, in any manner, could be undertaken without the Government's authorisation in writing.
- In the voluminous documentation presented to this Court during the course of the cause, nowhere does there appear to be the Government of Malta's express consent in writing for this transfer, and the company Steward presented no documentation to support its assertion that they had the Government's approval.

378. The Court notes that it is evident that the transfer by title of temporary emphyteusis made to the company Vitals Global Healthcare Assets Limited, was made on the basis of the provisions in Article 31(g) (C)(i)(b) which stipulates that land can be transferred:

if it consists in land which is offered for an industrial project after applicant would have satisfied the competent authority about the benefit which the project would render to the country's economy and that it would create an adequate number of jobs;

379. The Court also notes that nowhere in Cap. 573, does the action that a Member of the House of Representatives has pursuant to Article 33, be subject to a prescription period until that action can be undertaken, and therefore such a demand may be undertaken at any time, even after the transfer would have been done and effected.

380. As the Attorney General noted well, however, what has to be established is whether or not the effected transfer was actually in breach of Article 31. Such an argument, nevertheless, presumes as a point of departure, that the applicant, as a Member of the House of Representatives, has the right to request the rescission of a contract, a right which it appears that all the respondents, on the other hand, are contending that the applicant does not have.

381. The Court, after considering all the arguments brought before it by the respondents, points out that it is a duty of a member of the House of Representative to protect the interests of the citizens who elected him in order to represent them, and to ensure that Government properties are given to third parties in compliance with the provisions of the Law and in the best interest of the citizens.

382. Likewise, it is a duty of the parties in a contract who would have represented the Government or one of its entities in the property transfer of the people, as well as the Attorney General, to ensure that that party who would have been

given the Government property and who would have committed to do something in return, would not only pay lip service but actually also take action.

383. Such obligations should always be considered as an essential part of the transfer in itself, and not terminate the same day when the transfer is effected, but they remain in force during the whole existence of the concession that was given, with the result that they would always remain subject to the scrutiny of the parties in the agreement.

384. Therefore, once the assumed obligations should be considered as an intrinsic part of the transfer that was effected, that means that the breach of such obligations should lead to corrective, if not rescindable, action, which demand can be made at any stage, and not only on the day that the transfer was effected.

385. Taking all this into account, the Court considers that the applicant, as a Member of the House of Representative, pursuant to Article 33, had every right, if not duty, to intervene and launch the proceedings of this cause, in view of the shortcoming on the part of the parties in the contract and/or the Attorney General from doing this, in order to request the rescission of the transfer by title of temporary emphyteusis to the company Vitals, now Steward and the contracts related to it.

386. Therefore, the objections of the respondents where it is stated that the applicant did not have a legitimate interest to initiate this action, do not merit to be admitted.

D. That the applicant was not a party to the contract that is being disputed, and therefore he has no judicial interest to dispute it on the basis of the principle “Res inter alios acta”.

387. Another objection raised by the respondents, in particular the company Steward and INDIS Limited, was that the applicant was not a party to the contract of 22 March 2016 and therefore has no *locus standi* in this cause and had no right to request the cancellation of the contract.

388. The skilful defence counsel of the company Steward, to support this argument, refers to Articles 992, 999 and 1001 of Cap. 16 that stipulate the following:

992. (1) Contracts legally entered into shall have the force of law for the contracting parties.

(2) They may only be revoked by mutual consent of the parties, or on grounds allowed by law.

...

999. (1) A person cannot by a contract entered into in his own name bind or stipulate for anyone but himself.

...

1001. Contracts shall only be operative as between the contracting parties, and shall not be of prejudice or advantage to third parties except in the cases established by law

389. The Court nevertheless notes that, in this cause, there is a circumstance, as stipulated after all in the above-quoted Article 992(2) of Cap.16, that is, the one indicated as “*or on grounds allowed by law*”, where a person who is not party to a contract may request its rescission – and a known case in law is that of a member of the House of Representatives in the cause of a transfer, by any title, of Government land, that is, of Maltese and Gozitan citizens.

390. Therefore, contrary to what is specified by the company Steward, the applicant, as a member of the House of Representative elected in order to represent the interests of the citizens, has every right to intervene in contracts, in particular like that of this cause, where public property would be given to third parties for profit-making, in order to ensure that the obligations assumed in favour of the Government are honoured and, in the event that this is not the case, to request the rescission of the contract.

391. It is evident that, as in this cause, when a Government property, and therefore the citizens’, is given to third parties pursuant to Article 31 of Cap. 573, a member of the House of Representatives, as a representative of the citizens, and therefore on behalf of the citizens whose property would have been taken and given to third parties presumably for the benefit of the citizens, has every right to request the rescission of a contract given by virtue of such legislation, in the event that there is a breach.

392. The Court here notes that, in this cause, we have a Government property, that provides an essential service to the country, that is the Health service, which is of a National interest, and therefore, the Court expects that certainly such transfers should always be under the scrutiny of every representative elected by the people to represent them, whereby that representative has the duty towards the citizens to ensure that what is given to third parties, in this cause evidently for profit-making purposes, is utilised according to what has been agreed.

393. Therefore, this line of defence is not considered to be admissible by this Court and therefore this argument is being rejected.

E. That the respondents are not the legitimate opposing party in this cause

394. All the respondents, except for the company Vitals, now Steward, raised the objection that they are not the legitimate opposing party and therefore should be considered nonsuited.

395. The Prime Minister and the Attorney General maintained that it appeared evident that the temporary emphyteusis contract was signed by the company Malta Industrial Parks Limited, and therefore none of them had any involvement in it.

396. The said Prime Minister and Attorney General maintained that in regard to the so-called Related Instruments, that is, the Services Concession Agreement, the Health Services Delivery Agreement and the Labour Supply Agreement, the Minister for Energy, Health and Projects of the time, Dr Konrad Mizzi, always appeared on their behalf, despite that they conceded that he appeared in the name of the “*Government of the Republic of Malta*”.
397. The Chief Executive of the Lands Authority and the Chairman of the Board of Governors of the Lands Authority, on their part, maintained that, by means of Legal Notice No. 94 of 2016 and No. 95 of 2016, all the rights and obligations held by the Commissioner of Land were transferred to Malta Industrial Parks Limited, and therefore they were not involved in the contract that is the subject of this cause.
398. Lastly, INDIS Malta Limited, formerly Malta Industrial Parks Limited, contends that it has no public function and therefore should be considered nonsuited.
- 399. The Court, here, cannot not note its surprise towards such defence raised by the parties, just as though the respondents who raised this objection all wished to shirk their responsibilities and disassociate themselves by any means possible from the issue which is before this Court, that is the granting of three hospitals in Malta and Gozo to the company Vitals, now Steward.**
400. Having considered this, the Court reveals that, first and foremost, in the contract of 22 March 2016, where St Luke’s Hospital, Karin Grech Rehabilitation Hospital and the Gozo Hospital were conceded, therein appeared the representatives of Malta Industrial Park Limited, that is Mario Galea and the Commissioner of Land, Mr Peter Mamo.
401. Once the subject of this cause is precisely the cancellation of this contract, as well as the so called Related Instruments, this Court stated that it is somewhat perplexed how these can say that they should not have been part of these proceedings..
- 402. It is obvious that both the company INDIS Malta Limited, formerly Malta Industrial Parks Limited, as well as the Chief Executive of the Lands Authority and the Chairman of the Board of Governors of the Lands Authority, had to be summoned in this cause, and it is just as logical, but not necessarily obvious for some, that therefore this line of defence should never have been raised by them.**
403. Therefore there should be no doubt that both the company INDIS Malta Limited, formerly Malta Industrial Parks Limited, as well as the Chief Executive of the Lands Authority and the Chairman of the Board of Governors of the Lands Authority, had to be summoned to this cause.
404. In regard to the Prime Minister, it is evident that, in the contracts which he himself quoted, that is, the three Related Instruments, the Ministry for Energy, Health and Projects of the time, Dr Konrad Mizzi, was not appearing in the name of the Ministry of which he was Minister, as he moreover maintained every time that he testified

before this Court, but he was appearing in the name of the “**Government of the Republic of Malta**”, as described in the agreement itself.

405. Therefore, since it is evident that the contracts were done by the Government of the Republic of Malta, it should be none other than the Prime Minister who represents the Government of Malta in these proceedings.

406. Lastly, in regard to the Attorney General, whilst it is true that, in this cause, once the Prime Minister has been summoned he should not have been summoned in this cause, the Court points out that, as well specified in the application initiating proceedings, the Attorney General is being summoned to this cause on the basis of the obligation that the said Attorney General pursuant to Article 33 of Cap. 573, that requests the rescission of the contract, which obligation the applicant is contending that the Attorney General did not respect.

407. Therefore, the Court finds that all the parties summoned to the cause by the applicant, including the company Steward which, for the rest, did not raise a defence in this sense, are legitimate opposing parties in these proceedings and therefore their objections to be considered nonsuited do not merit to be admitted.

F. That there was no breach of the Conditions

408. The Court begins by pointing out that this issue is the core point of this whole action, as drawn up by the applicant in the application initiating proceedings – whether there was a breach of the Emphyteutical Concession granted to the company Vitals Global Health Assets Limited.

The thinking behind the granting of the Emphyteutical Concession

409. It starts by stating that it has already been established that the temporary emphyteutical concession granted by means of a Contract dated 22 March 2016, in the records of Notary Thomas Vella, should be considered as an intrinsic part of a series of various concessions that were granted to the company Vitals, now Steward, and that they had as the Main aim as described in the Services Concession Agreement signed on 30 November 2015, that is:

The Redevelopment, Maintenance, Management and Operation of the sites at St Luke’s Hospital, Karin Grech Rehabilitation Hospital and Gozo General Hospital.

410. There can be no doubt that the Emphyteutical Concession could have been viable and existent **ONLY** as a result of three Agreements that were concluded prior to its signing, that is, the Services Concession Agreement, the Health Services Delivery Agreement and the Labour Supply Agreement.

411. This Court has absolutely no doubt that, without the existence of these three agreements, the Government of Malta would **NEVER** have entered into such an

emphyteutical concession where, in essence, the property of three Main Hospitals in Malta, as are St Luke's, Karin Grech and Gozo, was passed in an almost absolute manner to the company Vitals, now Steward, with the result that the company Vitals Global Healthcare Assets Limited, which subsequently became known as Steward Malta Assets Limited, could dispose of them as they deemed fit.

412. It is also certain that the Government of Malta's intention was not to concede these properties to the company Vitals, now Steward, in order that these embark on economic development for the benefit of the said Vitals, now Steward, which thinking, on the other hand, appears to have been that of the shareholders of the time of the company Vitals when they presented their interest for the project, but the Government's thinking was that these are being conceded to them solely in order that the said company Vitals, now Steward, would be able to implement what they promised in the three Agreements that were concluded prior to the signing of the Emphyteutical Concession.

413. This is also reflecting in the writing of the Emphyteutical Concession itself, where the following is stated:

Whereas the granting of the emphyteutical concession of the Sites is calculated to lead to the achievement of key ancillary policy objectives of the Government of Malta including but not limited to:-

A:- the construction of:

- i) a medical school; and*
- ii) teaching facilities following consultation with the Government of Malta;*

B. the development and creation of state-of-the-art research and development facilities for the healthcare sector and of a medical campus in Malta and Gozo;

C. the construction and operation of a Regional Primary Care Hub (Health Centre) at Gozo General Hospital;

D. the redevelopment of Gozo General Hospital;

E. the creation of a medical campus in Malta and Gozo; and

F. the refurbishment and upgrading of St Luke's Hospital and Karin Grech Rehabilitation Hospital and Gozo General Hospital;

Whereas the Grantor and the Grantee have mutually agreed to proceed with the devolution of the Sites described hereunder unto the Grantee by title of temporary emphyteusis and are thus appearing hereon for this said purpose;

Whereas the Grantor is desirous to dispose of the Sites in accordance with the Disposal of Government Land Act (Cap. 268 of the Laws of Malta).

414. It also transpired that the company Vitals Global Healthcare Assets Limited had committed to the following:

4.5.2.3 The Grantee shall undertake or shall procure that development and construction works and maintenance of the Sites are undertaken and carried out by the Concessionaire for the purpose of discharging the Development Obligations and maintenance obligations relative to the Sites.

4.5.2.4 In addition the Grantee shall undertake the Development Obligations in line with the relative Malta Environment and Planning Authority permits and that all the said works and improvements forming part of the Development Obligations are executed according to the provisions of all building laws and regulations and in conformity with all health and safety regulations and practices. Save as provided for in this Emphyteutical Deed and the Related Instruments, all such works and improvements shall be deemed to accede to the immovable property without any right on the part of the Grantee to claim or demand at any time any refund or compensation from the Grantor for such works and improvements.

4.5.2.5 The Grantee binds itself to procure the execution of the development works after having obtained all the necessary building permits from the competent authorities in terms of Applicable Law. The Grantee guarantees that all such works shall be in accordance with all the approved building permits and plans and in conformity with all existing building laws and regulations and shall be executed under the direction and supervision of a qualified architect and civil engineer chosen by the Grantee and/or the Concessionaire, as may be applicable.

415. In the definitions established in clause 1.1, “**Development Obligations**” were defined as follows:

The obligations of the Grantee or the Concessionaire, including the obligation of the Grantee to procure the fulfilment of the Concessionaire’s obligations as undertaken in the Services Concession Agreement to redevelop the Sites in accordance with the terms thereof.

416. In regard to “**Concessionaire**”, the same definitions specify them as the respondent company Vitals Global Healthcare Management Limited and Vitals Global Healthcare Limited.

417. Therefore, there can be no doubt that, in the event that there was a breach of any one of the above-mentioned Agreements, this would also mean that there was also a breach in the Emphyteutical Concession, whose existence is intrinsically linked to this Agreement, and vice versa.

Concession Milestones

418. It transpires that in Schedule Six in the Services Concession Agreement, entitled **Concession Milestones**, that were deliberately concealed when these contracts were presented to the House of Representatives on 19 October 2016, the following obligations, as assumed by the three companies, Vitals, now Steward, were specified, and these were the following: (fol 1945)

Concession Milestones

1. *Handover Plan:* 120 days from Commencement Date
2. *Design Plans:* 90 days from Effective Date
3. *Barts College in Gozo Campus:* July 15th 2017
4. *50 Additional beds for KGRH at SLH:* January 1st 2017
5. *80 Rehabilitation Beds for SLH:* September 30th 2017
6. *Completion of New Build at GGH:* May 31st 2018
7. *Completion of Renovation of GGH:* September 30th 2018
8. *Completion, of SLH Tourism Beds:* December 31st 2018

419. It clearly transpires, from all the evidence as reproduced above, that none of these Completion Milestones were respected by the companies Vitals, now Steward.

420. It transpires, nevertheless, that the introduction of the Completion Milestones in the above-mentioned agreement, was subject to the condition that, as subsequently amended on 30 June 2017, these were rendered virtually ineffective, if not a downright mockery.

421. It transpires in fact that in the original agreement, in clause 16.1.2, which was also concealed from the House of Representatives, it is stipulated that:

The Concession Milestones shall be subject to the licences, the Other Licences and any other permits or licenses whatsoever required by the Concessionaire to fulfil its obligations in terms of this Agreement being obtained

- *For SLH and KGRH by the 15th February 2016;*
- *For GGH by the 30th May 2016.*

In the event that the Licences, the Other Licences and any other permits or licenses whatsoever required by the Concessionaire to fulfil its obligations in terms of this Agreement are not obtained by the said dates, the Concessionaire shall not be deemed to be in default of the Concession Milestones, the penalties contemplated in Schedule 6 shall not apply and the Parties shall endeavour to agree on a fresh set of concession milestones.

422. Such a right, however, was not enough for the company Vitals, now Steward, and despite that it was admitted and accepted by everyone, except the respondents Steward, that the above-mentioned milestones were not honoured in the originally established period of time, the Government of Malta, as it appeared evident that the company Vitals was breaching the agreement, instead of proceeding to cancel the agreement on non-fulfilment of the contractual obligations assumed by the company Vitals and therefore take back possession of the properties in order to develop them in another manner, **on 30 June 2017**, incredibly it succumbed and accepted the changes in the agreement that now stipulated the following:

“Provided that the Concessionaire shall by not later than thirty-six (36) months from the issuance of any relative construction permit complete the works covered by the said construction permit and in the event that the Concessionaire is unable to conclude the relevant works by the lapse of thirty-six (36) months the Concessionaire shall be automatically, without any further action of GoM, be granted a further extension of eighteen (18) months from the lapse of the thirty-six (36) months.

423. This means that, by means of this agreement, the Government conceded another three years to the companies Vitals, which were then AUTOMATICALLY extendable for another year and a half, that is four and a half years in total, that is until the end of 2022, in order to complete the works they had to execute.

424. It transpires, however, that even such an extension was not enough for Steward to execute all their undertakings!

425. Whilst the Court understands that these extensions were not honoured by the company Vitals as well as Steward, since we are now in 2023 and most of the works that should have been executed have not yet been completed, the Court states that it is truly concerned by the decision taken by the Government of Malta representatives on 30 June 2017. The consternation and concern of this Court is due to the fact that, whilst at the time, the Minister for Health Mr Chris Fearne was expressing his disappointment for the serious shortcomings in the fulfilment of the contractual obligations of the company Vitals, as moreover the said Mr Fearne stated under oath before this Court, Dr Konrad Mizzi, who, on the other hand, despite that he was no longer Minister for Health, for bureaucratic and other reasons which certainly have no logic or transparency and for which no one gave a logical explanation, was still a signatory for the Government with the companies Vitals, concede another three years to the companies Vitals, AUTOMATICALLY extendable to another year and a half, that is a total of **four and a half years**, that is until the end of 2022, to execute what they had committed to undertake by no later than the end of September 2018.

426. This Court points out that, although Dr Konrad Mizzi initially chose to testify and explain the facts as they happened according to him, at a later stage, as soon as these above-mentioned facts were revealed before this Court, he opted not to testify further, and therefore he offered no explanation for such a decision that certainly merits to be justified in some manner.

427. This Court also points out that Dr Konrad Mizzi's decision not to testify occurred following his resignation as a Government Minister on 26 November 2019, whereby this resignation, in Mr Fearne's words, occurred on the same day that an official complaint, which the said Mr Fearne had made against the said Dr Mizzi, was going to be discussed in Cabinet, in regard to the decisions and agreement that were being concluded despite his objections and serious concerns.
428. The Court agreed that these agreements of 30 June 2017, like other agreements that this Court shall have the opportunity to mention hereunder, do not make any logical sense and strongly strengthen the arguments and serious concerns expressed by the Auditor General in the reports drawn up in July 2020 and December 2021 regarding the contrivances and manoeuvrings that occurred prior to the granting of the contract initially to the company Vitals, whereby this Court had the opportunity to already refer to these concerns further above in this judgement, and that it itself adopts and takes on as its own, as shall be stated further on.

Works completed by the company Vitals and subsequently the company Steward

429. The Court notes that in these proceedings, the applicant is maintaining that the emphyteutical concession granted to the company Vitals Global Healthcare Assets Limited as well as the relative signed contracts indicated as Related Instruments should all be annulled and rescinded since the completion milestones established in the original agreement were not honoured by the company Vitals Global Healthcare Assets Limited, both when it was owned by the company Bluestone Investments Malta Limited, as well as when eventually it became the property of the company Steward Malta Investments Limited.
430. For this purpose, the applicant brought forward several witnesses to confirm that the work that the company Vitals promised to execute, actually had not been undertaken, where persons such as Dr Martin Balzan, President of the Medical Association of Malta, testified, who stated that almost nothing was done from what Vitals committed to undertake, whilst the Government continued paying much more than was due to the said company Vitals, now Steward, without being given what was due.
431. The said Minister for Health, Mr Chris Fearne, stated that it was only following his own personal involvement in the general issue, where he had been previously precluded from this involvement in view of the exclusive involvement of Dr Konrad Mizzi, that some works commenced at the Gozo Hospital, where the Medical School, which should have opened on 1 July 2017 was in fact opened four years later, that is, some time prior to his testimony before this Court on 1 March 2021. He also accepted that, however, in regard to St Luke's Hospital and Karin Grech Rehabilitation Hospital, most of the works and services that were promised had still not been undertaken.
432. Even the respondent Dr Joseph Muscat himself conceded that not all that was actually promised had been undertaken.

433. It was for this reason that this Court was expecting, from the company Steward, to present before this Court, detailed and incontestable evidence to show that all the investment that it had committed to make had been done, even in conformity with its own assertions that it had made around sixty million euro (€60,000,000) in works and investments, in compliance with what had been agreed by the company and its predecessors with the Government of Malta, and therefore its obligations had all been honoured.

434. Nevertheless, with great surprise to this Court, the only evidence that the company Steward presented before this Court was a one-page affidavit of Engineer James Grima, Director of Facilities Management at the three hospitals run by Steward, where, together with the affidavit, he exhibited seventy-three pages of photographs of project allegedly undertaken by them in compliance with what they were obliged to undertake.

435. This photographic report starts off with photographs of a new helicopter that was allegedly purchased in 2016, to the refurbishment of the Telephone Operator's bathroom at Gozo Hospital, with details of all the ceramic that they installed.

436. No indication were given of all the costs incurred to date, and, moreover, no indication was given regarding projects and other works that are planned in order to undertake what they are obliged to do, and which they have not yet undertaken.

437. This Court states that it is truly perplexed with the dearth of evidence that the company Steward presented before this Court, whereby this dearth probably reflects the lack of investment, projects and future planning that the same Steward has planned.

438. This Court notes that, according to the original plan, prior to being amended by various agreements to which the Minister of the time Dr Konrad Mizzi succumbed, by January six years ago, that is 2017, at St Luke's Hospital and Karin Grech Rehabilitation Hospital, fifty (50) additional patient beds had to be added.

– no evidence was presented by the company Steward that these new beds were added, and therefore the Court understands that these beds still have not been added to date.

439. This Court notes that according to the original agreement, by the end of September six years ago, that is 2017, at St Luke's Hospital, eighty (80) additional patient beds for other rehabilitation had to be added – **no evidence was presented by the company Steward that these new beds were added, and therefore the Court understands that these beds still have not been added to date.**

440. This Court notes that, according to the original agreement, by the end of May five years ago, that is 2018, at the Gozo Hospital, a new building had to be constructed within the said Hospital. Whilst it appears that some works were carried out at the Gozo Hospital, this Court has no indication that the works that the company Vitals, now Steward, originally committed to undertake, were all actually carried out, and therefore **the Court understands that the new building work at Gozo Hospital is**

still not completed to date.

441. This Court notes that, according to the original agreement, by the end of September five years ago, that is 2018, at the Gozo Hospital, complete renovation works had to be carried out within the said Hospital. **Once again, whilst it appears that some renovation works were carried out at the Gozo Hospital, including the Telephone Operator toilets, this Court has no indication that all the renovation works that the company Vitals, now Steward, originally committed to undertake, were actually carried out, and therefore the Court understands that the renovation works at Gozo Hospital is still not completed to date.**
442. This Court notes, lastly, that, according to the original agreement, by the end of December five years ago, that is 2018, at St Luke's Hospital, a project for the implementation of the so-called Tourism Beds had to be completed within the said Hospital. From all the evidence presented, it clearly transpired that this project **was not even being considered** and nothing was done in its regard, neither from the companies Vitals, when they were owned by Bluestone, and even less so when they were owned by Steward. It also appeared clear that this project had been totally shelved, such that even the company Steward had not presented any kind of evidence to support whether actually this Tourism Beds project had in fact been implemented or whether it was being implemented, or even, whether there were any plans for it to be implemented. **Therefore the Court understands that such a Milestone is NEVER going to be achieved.**
443. The glaring shortcoming of the companies Steward to try and justify their position and defending their insistence that there was no breach on their part for what they were obliged to undertake, led the Court to greatly doubt the good faith of the company Steward to honour the agreement and the obligations imposed on it and freely assumed by the company when it acquired the shares on the companies Vitals on 16 February 2018, as well as raising serious doubts regarding the honesty and good faith of the said Steward when they concluded the agreement of 27 August 2019 where it obliged the Government to pay it a penalty of one hundred million Euro (€100,000,000) in the event that this Court, as comprised, declares the contracts that were granted to the company Vitals, and which it failed to honour, as invalid.
444. Such a doubt, this Court notes, should also have been raised by whoever was involved in order to safeguard the rights of the Government of Malta and who was originally involved in this agreement, and this also includes Dr Konrad Mizzi, both until he was Minister for Energy, Health and Projects when the original agreements were signed, and moreover when, despite no longer being Minister for Health, **he signed various other agreements that amended the original agreement, and knowingly revoked and diminished rights that the Government had, whereby these amendments were made only for the benefit of the company Vitals as well as Steward, and certainly not for the benefit of the Government and the citizens, who ultimately, ought to have benefitted from the projects entrusted to the company Steward and that were not fulfilled.**

445. This Court's such doubts and concerns led it to examine and consider the last argument raised by the applicant, that is “*fraus omnia corrumpit*” [fraud corrupts all].

Fraus Omnia Corrumpit

446. The Court notes, first and foremost, that the respondents, in their submissions, contend that this argument and demand was made solely in the applicant's submissions and is not considered the applicant's application initiating proceedings, and therefore, once not mentioned expressly in the application initiating proceedings, it should not be considered by this Court.

447. The Court, nevertheless, notes that it is evident, from the writings of the application initiating proceedings, that although there was no direct reference to the phrase “*fraus omnia corrumpit*”, the arguments and premises raised by the applicant and all the demands that he eventually made, are all based on the fact that he was alleging that fraud was committed in the granting of the contract of the company Vitals and that therefore these contracts ought to be annulled and rescinded.

448. Having considered this point, the Court considers that it is therefore appropriate that it considers this point raised by the applicant, that is, whether or not the contracts are impacted by the element of fraud.

449. The Court considers that, prior to proceed further into this aspect of this cause, it would be appropriate to refer to our case-law, as developed over the years, regarding the principle of fraud, in order that any consideration that this Court shall make would be within the scope of the teachings of our Courts.

450. In the cause in the names **Transcontinental Properties Ltd vs European School of English Limited** decided on 14 October 2004 by Mr Justice Tonio Mallia, regarding the concept of fraud, the following was noted:

It would be appropriate that prior to any analysis of the consideration of fact and law involved in this cause, the cardinal principles consecrated in our case-law relative to the aspect of fraud in a civil matter should be established;

*According to the teaching outlined in the judgement “**Innocenzo Galea vs M. Zammit**”, Civil Appeal, 3 December 1919 (Vol. XXIV P I p 203) the principles are the following:-*

“(1) the fulfilment of the contracts is of general interest since it is a principle of public order; such consideration imposes that in causes of impugment of contracts by defect of consent one should proceed with great circumspection in order that an act that should remain in force has to be annulled;

(2) *the principles that regulate the fraud must be applied with more rigour when this concerns a gratuitous act than when it concerns a contract for valuable consideration;*

(3) **to prove the fraud the clues and conjectures are enough as long as these are serious and concordant, in order to generate the conviction that the liberality or the impugned contract was the result of contrivances used by the other party or by third parties.**

From the principles described above, these observations are formulated, also taken from our case-law on the matter:-

(a) *“In order to constitute contrivances, the fact that a prevalence acquired and exercised by a persons over another to force them into the contract is not enough, **but a specific element would be required, constituted by false representations, by fraudulent contrivances, by deceit, using any means to deceive the poor intelligence of the other contracting party**” – “**Giovanni Farrugia Gay vs Emanuele Farrugia Gay**”, First Hall, Civil Court, 3 May 1921 (Vol. XXIV P II p 578);*

(b) *“The contrivances employed by one of the contracting parties were such that without these, the other party would not have entered into the contract” - (“**Terese Galea vs Salvatore Bonnici**” at Vol. X page 592).*

In other words the deceit would have to be the determining cause which gave rise to an agreement that consolidated the deal (“**Alice Cassar Torreggiani vs Albert R Manche**”, Civil Appeal, 17 March 1958 (Vol. XLII P I p 126);

(c) *As established in sub-paragraph (2) of Article 981, the deceit or fraud is ever presumed but it has to be proven by whom it was alleged. Therefore it must be proven that one party employed scieneter fraudulent and sly contrivances that were serious (“**Joseph Mifsud nomine vs Paul Tanti**” and “**Josephine wife of Francis Galea vs Architect Walter Caruana Montaldo**”, the two causes decided on 4 February 1965 and 16 December 1970, respectively).*

451. In the cause **Carmelo Sciortino vs Carmelo Vella** decided by the First Hall on 27 June 1961 regarding the element of fraud, the following was noted:

Fraud can manifest itself under various aspects. In fact, it may be direct, like when there is the “animus nocendi” that is the intention of the debtor to defraud their creditor; or indirect and objective, to be thus called, and therefore the sole debtor’s conscience in the event of the gratuitous contracts, and that of the debtor not unknown too to the other contracting party in the event of onerous contracts, that the same debtor would have or may have which with that impugned act they would remain insolvent or that their assets (the debtor’s) will not be sufficient to satisfactorily counter their

creditors' rights; or in other words, the debtor does not necessarily need, prior to the transfer, to actively employ specific contrivances and machinations in order to achieve their purpose in order that their act be deemed as fraudulent, but in order to be thus, it is enough that they, with the transfer undertaken, would be aware that they are making it impossible or difficult for their creditors to achieve that which they merit in correspondence and as a corollary necessary for their right.

452. It appears therefore that in order for there to be an element of *fraus*, that is, fraud, as specified by the applicant, this must result from the conduct and actions taken by the person who entered into a contract for gain, in this cause the company Vitals, and it must be proven that it was the principal reason that led to obtainment of the desired intention with damages to the counterparty – in this cause, the emphyteutical concession for three hospitals in Malta for a period of thirty years solely renewable on its part for a maximum period of ninety years, as well as all the relative agreements.

453. This Court starts by noting that, from all the evidence collected and the facts as presented, the element of *fraus*, that is fraud, as well as the bad faith on the part of the company Vitals, as well as Steward subsequently, may transpire in three stages of the whole proceedings, that is, both what happened prior to the granting of the contract to the company Vitals, as well as what happened after the granting of the same contract, and even at the stage when the company Steward took over the game from the company Vitals and assumed the contractual obligations of Vitals.

Fraudulent conduct that led to the granting of the contract to the company Vitals

454. The Court considers that, prior to proceeding with its considerations, it would be just and appropriate to make ample reference to the **Timeline of key developments** drafted skilfully and schematically by the Auditor General in his well-detailed second report, that is, the one published in December 2021, entitled **PART 2 I A REVIEW OF THE CONTRACTUAL FRAMEWORK (ABRIDGED)**, where from page 8 to page 15 of the same report, he gives a detailed and well-described timeline of the whole progress of the process of this contract.

455. The Court considers that it is of great importance to reproduce it in full for the completeness of these acts, with the aim of giving a clear picture through which the Court will be able to draw its conclusions, on the basis of the considerations and studies made by the Auditor General, whereby the Auditor General made well-read and considered observations, which this Court has no difficulty to take on as its own.

January 2014 A medical brief for the national rehabilitation centre, outlining the envisaged development and expansion of facilities and services, was drawn up.

February 2014 A Memorandum of Understanding (MoU) was signed between the Government and the Queen Mary University of London (QMUL) regarding the development of the GGH as a teaching hospital.

3 March 2014 *A memorandum to Cabinet regarding the Gozo Health Campus, outlining the envisaged development and expansion of facilities and services, was presented by the then Minister for Health, the Hon. Godfrey Farrugia.*

2 April 2014 *The Hon. Konrad Mizzi was appointed Minister for Energy and Health, while the Hon. Chris Fearne was appointed Parliamentary Secretary for Health.*

10 October 2014 *An MoU was signed between the Government and the developers and operators of the proposed project, the majority of whom would later constitute the VGH. The MoU outlined the investors' interest in the setting up of a Gozo Medical Complex.*

9 December 2014 *Bluestone Investments Malta Ltd was registered in Malta and was solely owned by the British Virgin Islands-registered company, Bluestone Special Situations 4 Ltd.*

6 January 2015 *A letter of engagement was submitted by RSM Malta Consulting Ltd, appointed by Government to assist in the negotiation process.*

25 February 2015 *An agreement was entered into between QMUL Malta, the QMUL, Malta Enterprise, the Ministry for the Economy and Industry, the Ministry for Energy and Health (MEH) and the Ministry for Education and Employment for the establishment and operation of the Barts and the London School of Medicine and Dentistry in Malta.*

27 March 2015 *Government published 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 *Ram Tumuluri was appointed director and legal and judicial representative of Bluestone Investments Malta Ltd.*

10 April 2015 *The first meeting of the Steering Committee, which Committee was to provide strategic direction to the project, was held. Among other items discussed were the various work streams. These were identified as legal/ financial, lands, stakeholder and communications management, technical, permitting and RfP-related. The latter comprised the set-up of various subcommittees, including the Negotiation Committee.*

23 April 2015 *The second meeting of the Steering Committee was held, during which several of the points raised during the first meeting were discussed.*

1 May 2015 *A letter of engagement was submitted by BEAT Ltd, appointed by Government to assist in the negotiation process.*

11 May 2015 *Terms of reference for the various work streams were drafted.*

12 May 2015 *Bluestone Investments Malta Ltd entered into an agreement with Ashok Rattehalli, previously mentioned as one of the investors who had*

signed the MoU with the Government, entitling him to five per cent of the shares of the VGH on the day of its entry into the concession agreement.

13 May 2015 *VGH Ltd, whose directors and legal and judicial representatives were Mark Edward Pawley and Ram Tumuluri, was registered. VGH Ltd fully owned three other companies, that is, VGH Management Ltd, VGH Assets Ltd and VGH Resources Ltd.*

14 May 2015 *The third meeting of the Steering Committee was held.*

18 May 2015 *VGH Management Ltd and VGH Assets Ltd were registered. Mark Edward Pawley and Ram Tumuluri were the directors and legal and judicial representatives of the companies.*

19 May 2015 *Closing date for the submission of bids, by which date bids by the VGH, Image Hospitals Ltd and BSP Investments Ltd were received.*

22 May 2015 *Projects Malta Ltd informed the Chief Executive Officer (CEO) KGRH of his required participation in the service level definition team and in the contract drafting and negotiation team.*

10 June 2015 *The fourth meeting of the Steering Committee was held, during which a minute presented by the CEO BEAT Ltd regarding the appointment of the Negotiation Committee was approved. The Negotiation Committee's terms of reference were set and its members were to be the CEO BEAT Ltd (acting as Chair), a Partner from RSM, the CEO of Malta Enterprise and the Managing Partner at Mifsud Bonnici Advocates.*

19 June 2015 *The Evaluation Committee concluded its assessment of the bids submitted in reply to the RfP issued by Projects Malta Ltd for the redevelopment, maintenance, management, and operation of the SLH, KGRH and GGH, recommending the VGH as the preferred bidder.*

21 June 2015 *The Minister for Energy and Health submitted a memorandum to Cabinet titled 'Healthcare Services Concession', wherein Ministers were requested to approve the award of preferred bidder status to the VGH and the commencement of negotiations with the Company.*

23 June 2015 *Cabinet approved the memorandum put forward by the Minister for Energy and Health.*

27 June 2015 *Projects Malta Ltd informed the VGH that it was designated the highest-ranking bidder.*

10 July 2015 *The fifth meeting of the Steering Committee was held. The main elements for negotiation with the VGH, as indicated in a paper presented by the CEO BEAT Ltd, were discussed. Key elements identified in this respect comprised the ownership and corporate structure, the concession agreement, financing, the joint monitoring board, ground rent, the health services delivery agreement, quality standards, medical tourism and termination.*

22 July 2015 *The Chair Negotiation Committee informed the other stakeholders involved in negotiations and contract drafting that instructions had been received to conclude negotiations by 10 August 2015.*

29 July 2015 *The sixth meeting of the Steering Committee was held. The focus of this meeting was the concession agreement which, at the time, was being revised with the VGH, resulting in the emergence of several points of discussion.*

25 August 2015 *Draft copies of the Services Concession Agreement (SCA) were submitted to the Attorney General's Office.*

31 August 2015 *The seventh meeting of the Steering Committee was held. Updates relating to ongoing actions, primarily concerning the relocation of the National Blood Bank Unit, site preparation and the concession agreement, were provided. Of note was an action item attributed to the CEO BEAT Ltd and the RSM Partner, who were to share the governance structure being proposed and the respective terms of reference with the PS MEH-Health for review.*

9 September 2015 *Following negotiations, Projects Malta Ltd notified the VGH of Government's intention to award it the services concession for the redevelopment, maintenance, management and operation of the sites at the SLH, the KGRH and the GGH.*

13 October 2015 *The Minister for Energy and Health provided Cabinet with an update on the public-private partnership (PPP) for the Sites. According to the Minister, the concession agreement, the healthcare services agreement, the agreement regulating labour supply and the emphyteutical deed were finalised. Another agreement dealing with the financial aspects of the concession was yet to be concluded.*

14 October 2015 *The eighth meeting of the Steering Committee was held. Discussions focused on ongoing actions mainly relating to site preparation and updates relating to the negotiation process. This was the last meeting for which records were provided to the NAO. It remained unclear to this Office whether the Steering Committee continued to operate beyond this date.*

27 October 2015 *Cabinet again discussed the PPP. The Minister for Energy and Health indicated that the main contracts that were to regulate the PPP had been negotiated. These included the concession agreement, the emphyteutical deed, as well as direct and collateral contracts governing the obligations of the parties in cases of default. It was agreed that the Minister was to sign these contracts with the VGH.*

30 November 2015 *The Government, represented by the Minister for Energy and Health, and VGH Ltd, VGH Assets Ltd and VGH Management Ltd, represented by Ram Tumuluri, entered into the SCA. The SCA provided a framework for the concession granted by Government to the VGH for the redevelopment and improvement of the SLH, the GGH and the KGRH.*

30 November 2015 *The Government, represented by the Minister for Energy and Health, and VGH Management Ltd, represented by Ram Tumuluri, entered into the Health Services Delivery Agreement (HSDA). The Agreement regulated the terms and conditions of the purchase by the Government and the supply by VGH Management Ltd of healthcare/clinical and ancillary non-clinical services.*

7 December 2015 *The Government, represented by the Minister for Energy and Health, and VGH Management Ltd, represented by Ram Tumuluri, entered into the first Addendum to the HSDA. Through this Addendum, the Government agreed to take up 100 additional beds.*

7 December 2015 *The Government, represented by the Minister for Energy and Health, and VGH Management Ltd, represented by Ram Tumuluri, entered into the second Addendum to the HSDA. Through this Addendum, several changes were made to the services, activities and operations that were to be carried out by the VGH as part of the concession.*

7 December 2015 *The Government, represented by the Minister for Energy and Health, and VGH Management Ltd, represented by Ram Tumuluri, entered into an Agreement regarding a possible additional concession fee payable to the Government by VGH Management Ltd. The fee was not to exceed €2,800,000. Noted in the Agreement was that the Government was to refund the paid additional fee to VGH Management Ltd.*

15 December 2015 *A letter of engagement was submitted by Mifsud Bonnici Advocates in relation to its role of assisting Government in negotiations. The date of this letter followed the conclusion of the negotiation process.*

8 January 2016 *The Government, represented by the Minister for Energy and Health, and VGH Management Ltd, represented by Ram Tumuluri, entered into the Labour Supply Agreement (LSA). The LSA allowed for the supply of Government's employees to VGH Management Ltd for the latter to meet the terms of the Transaction Agreements.*

17 February 2016 *The VGH Ltd and the VGH Management Ltd entered into an agreement with the engineering, procurement and construction (EPC) contractor Shapoorji Pallonji Mideast LLC. Shapoorji was to provide, furnish, or install all labour, materials, plant and equipment, temporary works, supervisory and other staff, inspection, utilities, supplies, consumable and all other items required for the construction of the SLH, the KGRH and the GGH, and was also to construct the project at these sites.*

2 March 2016 *VGH Ltd provided the Government with a performance guarantee in accordance with the terms of the SCA. The guarantee presented was issued by Deutsche Bank AG, London on 2 March 2016, for the sum of €9,000,000, and was valid until 31 May 2018.*

9 March 2016 *The Attorney General provided advice to the Prime Minister in relation to the transfer of the sites. Despite requests to the OPM, the NAO was informed that the advice sought could not be traced.*

22 March 2016 *The CEO Malta Industrial Parks (MIP) Ltd, appearing for and on behalf of MIP Ltd, in turn appearing for and on behalf of the Commissioner of Land; the Commissioner of Land, in the name and on behalf of the Government and appearing solely for the purposes of the clause relating to the disposal of the sites at the GGH, the SLH and the KGRH; and the Director VGH Assets Ltd, entered into the Emphyteutical Deed. Through this Deed, MIP Ltd granted VGH Assets Ltd the title of temporary emphyteusis for 30 years of the buildings and sites occupied by the SLH, the GGH and the KGRH. On expiry, the grant could be extended for 69 years at the sole discretion of VGH Assets Ltd.*

29 March 2016 *Concession milestone – the handover plan was to be submitted to Government. **The VGH failed to provide the handover plan by the specified date.***

29 April 2016 *Hon. Konrad Mizzi ceases to be the Minister for Energy and Health and is sworn in as Minister within the OPM. Hon. Chris Fearne is sworn in as Minister for Health.*

19 May 2016 *The Government, represented by the Minister within the OPM, and VGH Ltd, VGH Assets Ltd and VGH Management Ltd, collectively represented by Ram Tumuluri, entered into a Side Letter to the Transaction Agreements on 19 May 2016 to confirm the attainment of several conditions specified in the SCA, on the basis of which the rights and obligations in the same Agreement were to be rendered effective under the terms and conditions stipulated in the Letter. **Of note was that the VGH's obligation to supply the Government with the Financing Agreements was waived to 19 February 2017.***

24 May 2016 *VGH Management Ltd submitted a planning application for the restoration of the elevation of the main building within the SLH (PA 03134/16).*

1 June 2016 *The effective date, triggered by the fulfilment or waiver of stipulated conditions in the SCA, which rendered effective the provisions of the contracts.*

June 2016 *The handover plan was submitted by the VGH, in fulfilment of the concession milestone. This condition had been waived through the Side Letter to the Transaction Agreements dated 19 May 2016.*

August 2016 *The Health Construction Committee (HCC), Health Management Committee (HMC) and Project Monitoring Board (PMB) were constituted. The HMC, the HCC and the PMB, in their combined format, met several times between August 2016 and April 2017.*

11 August 2016 VGH Management Ltd submitted a planning application for the construction of a medical school (PA 05493/16).

30 August 2016 Concession milestone – the design plans were to be submitted to Government. **The VGH failed to achieve this milestone by the indicated date and until the concession was transferred to Steward Health Care.**

2 September 2016 PA 03134/16, which related to the restoration of the elevation of the main building within the SLH, was approved by the Planning Commission. A full development permission was issued.

15 September 2016 The Government, represented by the Minister within the OPM, and VGH Ltd, VGH Assets Ltd and VGH Management Ltd, collectively represented by Ram Tumuluri, entered into a second Side Letter to the Transaction Agreements. In this Side Letter, it was acknowledged that VGH Ltd, VGH Assets Ltd and VGH Management Ltd had computed the accurate value of the charges for deployed employees of Government to the VGH and subcontracted human resources (HR).

16 September 2016 RSM Malta issued a report outlining the details of the list of resources and the charges in relation to the resources.

14 November 2016 VGH Management Ltd submitted the drawings of a master plan for the refurbishment of the GGH for screening, to obtain feedback from the Planning Authority (PA) in preparation for the eventual submission of a planning application (PA 07491/16).

21 November 2016 Request by the UHM and the MAM submitted to the PAC for an investigation of the contracts awarded by the Government to the VGH in relation to the GGH, the SLH and the KGRH.

5 December 2016 Further correspondence submitted by the Government members on the PAC in relation to the request made for investigation.

9 December 2016 The analysis of the statistical treatment of the project, classifying it as on the Government balance sheet, is compiled by the National Statistics Office (NSO). The capital expenditure related to the project was recorded as a gross fixed capital formation for Government, with an impact on the fiscal balance, and a corresponding increase in Government's debt. The impact of this classification for the period 2015 to 2019 was €26,474,000.

12 December 2016 The Minister for Finance submitted correspondence to the Prime Minister informing him about the NSO's findings. Stated was that classification of the project as on-balance sheet changed the cost-benefit fundamentals of the project.

End 2016 For 2016, Government paid the VGH a total fee of €16,022,406.

1 January 2017 Concession milestone – 50 additional beds were to be provided at the KGRH. **The VGH failed to achieve this milestone by the indicated date and until the concession was transferred to Steward Health Care.**

16 January 2017 The VGH and the Malta College of Arts, Science and Technology entered into an agreement relating to the nursing college, which agreement was valid for three years.

14 February 2017 The Government, represented by the Minister within the OPM, and VGH Ltd, VGH Assets Ltd and VGH Management Ltd, collectively represented by Ram Tumuluri, entered into the first Side Letter to the SCA. Through this Side Letter, the Government waived the obligation to provide the Financing Agreements by 19 February 2017, subject to a copy being provided by not later than 30 June 2017.

14 February 2017 The Minister for Finance wrote to the Minister within the OPM, outlining that unless there were developments on the agreements, the NSO's comments would continue to hold. On the same day, the Minister within the OPM replied that discussions of clauses had been reopened with the VGH.

15 February 2017 The full development permission for PA 05493/16, which comprised the construction of a medical school, was granted.

7 March 2017 The Minister within the OPM sought Cabinet's ratification of the extension of the long stop date for financial close, which date was to be extended to 30 April 2017.

7 March 2017 Cabinet approved the memorandum submitted by the Minister within the OPM.

23 June 2017 The Government, represented by the Minister for Tourism, and VGH Ltd, VGH Assets Ltd and VGH Management Ltd, collectively represented by Ram Tumuluri, entered into a second Side Letter to the SCA. Through this Side Letter, the Government waived the obligation to provide the Financing Agreements by 30 June 2017, subject to a copy being provided by not later than 31 December 2017.

24 June 2017 Hon. Konrad Mizzi is sworn in as Minister for Tourism following the 2017 General Election. Hon. Chris Fearne retains his role as Minister for Health.

30 June 2017 The Government, represented by the Minister for Tourism, and VGH Ltd, VGH Assets Ltd and VGH Management Ltd, collectively represented by Ram Tumuluri, entered into the Addendum to the SCA. **Through this Addendum several terms of the SCA were revised, foremost among which was a proviso relating to the deadline for the completion of works, which was revised from a fixed deadline to one that rendered the deadline relative to the attainment of relevant construction permits.**

30 June 2017 *The Government, represented by the Minister for Tourism, and VGH Management Ltd, represented by Ram Tumuluri, entered into a third Addendum to the HSDA. Through this Addendum, changes were made to amend the first Addendum to the HSDA, whereby it was agreed to extend the date of provision of the additional beds from 1 January 2018 to not later than 1 January 2020.*

30 June 2017 *The Government, represented by the Minister for Tourism, and VGH Management Ltd, represented by Ram Tumuluri, signed an Addendum to the LSA, which was made effective with retrospective effect from 1 June 2016. The Addendum superseded the Side Letter dated 15 September 2016. Several LSA-related amendments were introduced through this Addendum, foremost among which was the formalisation of the list of resources as corresponding to 1,536 staff.*

1 July 2017 *Concession milestone – the Barts College in the Gozo Campus was to be completed. **The VGH failed to achieve this milestone by the specified date and until the concession was transferred to Steward Health Care.***

11 July 2017 *Authorisation for entry into the third Addendum to the HSDA – entered into a few weeks prior – was sought from Cabinet through a memorandum submitted by the Minister for Tourism. The memorandum stated that the extension was required due to delays experienced in the issuance of planning permits, which had delayed construction. Also sought through the memorandum was an extension in the long stop date for financial close, now proposed to be 31 December 2017.*

11 July 2017 *Cabinet approved entry into the third Addendum to the HSDA and the extension of the long stop date for financial close to 31 December 2017.*

24 July 2017 *VGH Resources Ltd was registered. Ram Tumuluri was appointed as its director and secretary.*

7 September 2017 *In correspondence sent by the Minister for Finance to the Minister within the OPM, the latter was requested to expedite the review of outstanding matters relating to the concession awarded to the VGH and subject to discussions.*

25 September 2017 *The first meeting of the Quality and Assurance Board (QAB) was held, wherein the Board was established. Monthly meetings were held from September to December 2017 and recommenced in May 2018.*

30 September 2017 *Concession milestone – the provision of 80 rehabilitation beds at the SLH. **The VGH failed to achieve this milestone by the indicated date and until the concession was transferred to Steward Health Care.***

2 October 2017 VGH Management Ltd submitted a planning application for the demolition of part of the GGH and for the building of stores (PA 09895/17).

19 December 2017 The Prime Minister informed Cabinet of the possibility of positive developments in relation to the concession.

27 December 2017 VGH requested the MIP Ltd to provide its consent to and approve the sale by Bluestone Investments Malta Ltd of shares in issue in VGH Ltd to Steward Healthcare International Ltd.

29 December 2017 **The Minister for Tourism informed the VGH that the Government consented to the request for and approved the eventual transfer of shares held by Bluestone Investments Malta Ltd in VGH Ltd to Steward Healthcare International Ltd.**

29 December 2017 The Minister for Tourism informed the VGH that, further to the VGH's request for an extension of the deadline to pursue the transfer of shares, Government agreed that the deadline be extended to 5 March 2018 or to one month following the transfer of shares.

End 2017 For 2017, the Government paid the VGH a total fee of €33,555,813.

3 January 2018 The MIP Ltd consented to the request for and approved the eventual transfer of shares held by Bluestone Investments Malta Ltd in VGH Ltd to Steward Healthcare International Ltd.

8 January 2018 Further correspondence submitted by the Opposition members on the PAC in relation to the request made for investigation.

9 January 2018 In a memorandum submitted by the Minister for Tourism, Cabinet was requested to ratify the extension for financial close up to 5 March 2018, or possibly earlier, and endorse the consent granted by the Government for the eventual transfer of shares held by Bluestone Investments Malta Ltd in VGH Ltd to Steward Healthcare International Ltd.

9 January 2018 The Prime Minister and the Minister for Tourism discussed the memorandum that had been submitted by the latter during a Cabinet meeting. Cabinet sanctioned that requested through the memorandum.

7 February 2018 The development permission for PA 09895/17, corresponding to the demolition of part of the GGH and the building of stores, was granted.

16 February 2018 The transfer of shares held by Bluestone Investments Malta Ltd in VGH Ltd to Steward Healthcare International Ltd was finalised. **Aside from the other concession milestones that had not been achieved, by this date the milestones relating to the completion of the new build at the GGH, the completion of renovation of the GGH and the completion of the SLH medical tourism beds remained pending as their deadline had not yet occurred.**

19 February 2018 *The Prime Minister informed Cabinet that the transfer of the shares of the VGH had been concluded. This marks the tail end of the audit period reviewed in the second part of the NAO audit of the concession awarded to the VGH.*

9 July 2018 *Eurostat provided an assessment confirming the on-balance sheet recording of the project as concluded by the NSO.*

456. It transpires, from all the evidence as presented before this Court, as well as from the summary of dates as drafted by the Auditor General in his report published in December 2021, that **well before** the Government notified the public in general of its intention to privatise three public Hospitals, whereby the intention was first indicated some time prior to the publication of the Request for Proposals on 27 March 2015, the ultimate and original shareholders of the company Vitals, that is, the so-called Beneficial Owners, had already entered into a Memorandum of Understanding with the Government of Malta regarding Hospital development.
457. It transpires, in fact, that on **10 October 2014**, (fol 1158), the investors that subsequently formed the company Vitals Global Healthcare Limited, reached an agreement, entitled Memorandum of Understanding, with the Government, after the Government was informed that a group of investors was interested in investing in the Gozo Hospital where they would take over its management in order to extend and improve its operations, as well as to open a Medical School managed by Barts School of Medicine. (see paras 190 to 195)
458. It transpires that this group of investors consisted of developers and operators that subsequently formed the company Vitals Global Healthcare Ltd including Mark Edward Pawley, with the company Bluestone Special Situation 4 Limited, Dr Ashok Rattehalli, with the company AGMC Incorporated and two Pakistani nationals, Mohammad Shoaib Walajahi and Chaudhry Shaukat Ali, who had formed a company with the name Pivot Holdings Limited, a day prior to this agreement, that is 9 October 2014.
459. It transpires that the Government, in this agreement, committed not to negotiate with anyone regarding the Gozo Hospital while the agreement was in force, a condition that had to remain in force until the end of February, or until the agreement between the Government and the investors would still be valid.
460. It transpires, meanwhile, that no public announcement had been made to the public, for the concession of the three hospitals.
461. It also transpires, and this is of great importance in this cause, that, through this agreement, the Government agreed with the investors that it would help them to provide them with all the necessary information in order to be in a position to give the best offer to the Government for what it required – it appears evident that such information was subsequently used by the company Vitals when it filed its proposal that subsequently was described as a “true and detailed picture of healthcare in Malta and Gozo at present” by whoever was evaluation Vitals’ offer.

462. **In this agreement of 10 October 2014, the Government had insisted that it would conduct Due Diligence of all the Investors and that the Government had the right to cancel everything in the event that this Due Diligence failed!**

463. Subsequently, it transpires that on **23 November 2014**, an agreement was concluded between the said investors, who were Mark Pawley for Bluestone, Ram Tumuluri for Portpool and Dr Ashok Rattehalli for the company AGMC on the one part, and Dr Gupta for Medical Associates of Northern Virginia, where **these were already working out how they would be dividing the profits of the project** that included: (see paras 90 to 94)

- **Takeover the existing 210 bed general hospital in Gozo, Malta and operate the hospital as per the terms agreed with the Government of Malta.**
- *To build an additional 200 bed hospital in the same premises. Gozo General Hospital to be a total of 410 bed teaching hospital by the end of 2016.*
- *To build a 200-bed assisted living facility in the same premises.*
- *To build a medical college as per the standards of Barts and the London School of Medicine and Dentistry.*
- **Potential acquisition of St Philips and/or St Luke's Hospital in Malta.**

464. It transpires, once again, that, meanwhile, no public announcement had yet been made as mentioned above.

465. It transpires that in the beginning of **January 2015**, as confirmed both by Dr Konrad Mizzi, as well as Mr Chris Fearne, the investors gave their presentation, but, in Dr Mizzi's words, the Government's requirements were no longer focused solely on the Gozo Hospital but wanted to also include Hospitals in Malta too.

466. Here, the Court cannot not point out that, incidentally, the private agreement that the investors concluded among themselves **after** the Memorandum of Understanding was signed with the Government on 10 October 2014, already included that they would also invest in a hospital in Malta, and possibly the Government St Luke's Hospital – a clear indication that they could have already been aware of some changes in the Government's intentions.

467. It transpires that eventually, according to Dr Mizzi, following the meeting held in January 2015, the Government allegedly notified them that it was not interested in a project with them, since they wanted to expand the project – **however, there appears to be no documentation anywhere to support such an allegation!**

468. It transpires, however, on the other hand, that not only was the investors' proposal not being contemplated, but that on **9 February 2015**, that is **following** this meeting where, according to Dr Mizzi, the investors were informed that the Government was no longer interested in their plan, the Executive Chairman of Malta Enterprise, in a

letter countersigned by the Minister for the Economy and the Parliamentary Secretary for Planning, wrote to the Director General of Lands where he informed him that Malta Enterprise had identified land at the Gozo Hospital measuring 72,483sqm, that is of the same size as that identified for the investors, “for use as part of the medical hub intended to be created in Gozo”. It was for this reason that Malta Enterprise requested the Government Property Department to do all that was necessary to transfer the property to its name. (fol 2893)

469. Meanwhile, it transpires once again that no public announcement had yet been made that the Government was interested in conceding the Gozo Hospital and the hospital in Malta to the private sector.
470. It appears however, that subsequently, the Authorities may have had second thoughts, and in fact, on **16 March 2015**, the Commissioner of Land received a letter, this time signed by the Chief Executive Officer of Malta Industrial Parks Limited, and countersigned by the Minister for the Economy and the Parliamentary Secretary for Planning where, whilst referring to the letter of the Executive Chairman of Malta Enterprise of 9 February 2015, he informed him that it had been agreed that the land was to be transferred to Malta Industrial Parks Limited and not to Malta Enterprise, and so, the Commissioner for Land had to make all the arrangements to transfer it to Malta Industrial Parks Limited. This letter was also countersigned by the Executive Chairman of Malta Enterprise.
471. Meanwhile, once again, no public announcement had yet been not made that the Government was interested in conceding the Gozo Hospital and the hospital in Malta to the private sector.
472. Eventually, on **27 March 2015**, in a thirty-four (34) page document, the Government published a **Request for Proposals** for the concession of St Luke’s Hospital, Karin Grech Hospital and the Gozo Hospital, whereby this document, according to Dr Konrad Mizzi, was drawn up by Ganado Advocates – the Court here points out that this document is comprehensive and details, that certainly took quite some time to be drafted and approved, and therefore it has no doubt that work on this document had been going on for some weeks if not months in advance. This assumption is also being made on the basis of what was stated by Adrian Said, Executive Chairman of Projects Malta Limited at the time of the RfP and the whole process, where in his testimony he insisted that when he took up his position in September 2014, he had found that the RfP was already prepared and ready! (para 239)
473. It transpired that in the documentation of the Request for Proposals, published on 27 March 2015, among the conditions imposed on the bidder, there were the following: (Vol V - fol 1096)

3.15.3 – When putting forward a proposal, the Bidder must declare that is it affected by no potential conflicts of interest and to its knowledge (reasonable ascertained) has no particular link with other tenderers or parties involved in the competitive award process. Should such a situation arise during the competitive award process, including the adjudication of the proposals or

during subsequent negotiations, the Bidder must immediately inform PM. PM reserves the right to proceed on the matter as it may determine at its own and absolute discretion in the circumstances.

3.14.4 – Bidders are responsible for ensuring no conflicts of interest exist between the Bidder and their advisors and the Government and its advisors. Any Bidder who fails to comply with this requirement may be disqualified from the procurement at the discretion of the Government.

474. It transpires that at no time did the company Vitals Global Healthcare Limited, incorporated at the time by the company Bluestone Investments Malta Ltd, that was registered on 9 December 2014 with the exclusive aim that the investors conclude the agreement reached on 10 October 2014, inform Project Malta regarding any conflict that it could have had in view of an agreement already reached between its investors and the Government of Malta specifically regarding the concession of the Gozo Hospital to them.

475. It transpires that, according to the timeline established in this **Request for Proposals**, no later than two weeks following the public call, that is, between the 13th and 17th April 2015, an inspection of the three Hospitals was going to be carried out in agreement with Projects Malta. Subsequently, no later than one week thereafter, that is, 22 April 2015, any interested party had the final opportunity to request clarifications, which were then to be explained no later than 28 April 2015 – that is, according to this timeline, any interested party had no more than three weeks to take into account the extent of the project of the three hospitals which they would be entering into.

476. It transpires, lastly, that any party interested in filing a proposal, had to submit this proposal no later than 19 May 2015, together with a bid bond of half a million euro (€500,000) – that is less than two months following the public call for a project that involved three major hospitals in Malta and Gozo.

477. Incidentally, the Court here notes that, in the agreement made among the investors on 23 November 2014, they had agreed that by January 2015, they would advance the sum of six hundred thousand American Dollars (\$600,000) in the project in order to vouch for pre-project costs. Although it is true that in the same agreement, such money was indicated as various costs, the fact remains that the investors had already made substantial investment in this project, which, according to Dr Mizzi, had been dismissed by the Government after the presentation given by the investors - this Court finds it hard to believe that this money vanished into thin air.

478. It appears that on 19 May 2015, three proposals were submitted to Projects Malta but the bid bond was presented solely by the company Vitals Global Healthcare Limited, which was incorporated on **13 May 2015 and in which there** were 1,200 full paid up shares, by means of a deposit from a Bank of Valletta bank account in Victoria, Gozo (fol 625).

479. It transpires that, as stated by the three members of the Evaluation and Adjudication Committee who testified before this Court, that is James Camenzuli, Manwel

Castagna and Robert Borg, the proposal of the company Vitals Global Assets Limited, incorporated six days prior to the submission of the proposal, was well read and reasoned, where they had a very detailed study of the whole project and clear indications of what was to be done.

480. In their own words:

The Evaluation and Adjudication Committee noted that the VGH Bid Submission is a detailed submission, which presents a true and detailed picture of healthcare in Malta and Gozo at present. Their Bid Submission is based on the present inefficiencies of the service and how to improve it.

481. The Court here cannot not note that, certainly over a short span of two months, it would have been impossible for any entity to present such a detailed plan with a viable business plan, if not on the basis of detailed studies and information that it may have undertaken itself, or through third parties that it engaged in advance prior to the issue of the Request for Proposals.

482. In this cause, this Court has absolutely no doubt that the company Vitals Global Healthcare Limited used the agreement reached with the Government of Malta through a Memorandum of Understanding done on 10 October 2013, where the investors in the company that was its main shareholder, that is Bluestone Investments Malta Limited, had already bound the Government to provide them all the required information in order to be in a position to carry out a Hospital project in Gozo and a Medical School.

483. This Court also has no doubt that it appears evident that the company Vitals Global Healthcare Limited abused of the information already known to its investors in order to present a project that could not be refused by the Government of Malta, wherein the Government had already committed, in its electoral programme by which it was elected two years previously, to improve the Hospitals of Malta and Gozo, and therefore it was bound politically to execute the promises made, and the investors of the company Vitals, well aware of this political situation, through prior well-devised contrivances and manoeuvrings, took advantage of the Government's political ambitions and led the said Government of Malta to select the project that they proposed.

484. This Court, nevertheless, cannot not note the lax and unprofessional, almost amateurish, methodology which was used throughout the whole process by persons entrusted by the Government to evaluate and adjudicate the project as well as to manage the whole process that led to the contracts being granted to the company Vitals.

485. It appears, from all of the evidence, that the Evaluation and Adjudication Committee conducted absolutely no evaluation of the financial Due Diligence of the said Vitals Global Healthcare Limited, and relied only on the so-called Letters of Comfort from international banks, whereby this documentation, nevertheless, eventually led to no investment being made on the part of these banks for the project in Malta, where it transpired that the only financial source that the company Vitals obtained, besides

the regular payments on the part of the Government of Malta itself, was from a local bank, that is, Bank of Valletta plc, in which after all the Government of Malta is a main shareholder.

486. This Court cannot also not note that, whilst in the Memorandum of Understanding done in October 2014, it was specified that the Government was insisting that Due Diligence should be conducted on all the investors involved, in the Request for Proposals there is absolutely no request for information regarding Due Diligence of whomsoever was submitting the proposals – in the eyes of this Court, this is a clear indication that there was no reason for this to be undertaken since the issue of the Request for Proposals was obviously a consequential part of the agreement that the investors had concluded with the Government on 10 October 2014.

487. This Court, in fact, is convinced that the issue of the Request for Proposals on 27 March 2015 was just a part of the whole plan conceived and concerted solely by the investors who had concluded the agreement of 10 October 2014 with the Government that, by means of contrivances and financial leverage they maintained that they had, with funds of billions of Euro, deceived everyone and led the Authorities to believe their lies and concede the final project to them, whereby these contrivances eventually vanished into thin air with nothing left but empty promises.

488. In regard to the Due Diligence, it is to be noted that all the persons involved in the Evaluation and Adjudication Committee strongly insisted that it was not in their remit to ensure that Due Diligence of the company Vitals Global Healthcare Limited was undertaken, whereby they insisted that this Due Diligence was not included when the Request for Proposals was drafted by the Lawyers engaged by the Government for this purpose, that is Ganado Advocates.

– the Court was given to understand, therefore, that they had an indication that it was not necessary to conduct Due Diligence.

489. It is also noted that even the Auditors of the respondent company Malta Industrial Parks Limited, subsequently called INDIS Limited, that is RSM Limited, that incidentally were also members of the Steering Group that was leading all the project implementation even prior to the issue of the RfP, in the report that they drew up for the company INDIS Limited in order to justify the importance of the investment of the company Vitals Limited, in order to satisfy the provisions in Article 31 of Cap. 573, which report coincidentally was presented one day prior to the signing of the emphyteutical concession contract, they had insisted that their report should not be considered as a financial audit of the company Vitals.

490. This Court, therefore, comes to the assumption and conclusion that it appears evident that the agreement which the investors had with the Government, signed on 10 October 2014, was an intrinsic part of a whole process that led to the issue of a Request for Proposals as well as to the selection of the company Vitals and to the concession of the final contract to the said Vitals.

491. This is being also stated because, in view of this clear and direct connection between the Memorandum of Understanding of 10 October 2014 and the granting of the concession of the company Vitals, it was the said company Vitals' obligation, in the Evaluation process, to clearly indicate and declare that there was such a conflict situation, which conflict situation imperatively should have led the Evaluation Committee to disqualify the Vitals company from the selection process – nevertheless, all the Committee members insisted that they were not aware of any Memorandum of Understanding and even Robert Borg maintained that, had he known, he would have refused the position.
492. The fact that the company Vitals Global Healthcare Limited, **consciously**, opted to conceal the existence of the Memorandum of Understanding on 10 October 2014 from the Evaluation Committee, is a clear indication of the fraudulent intention it had at the time when it presented its proposal to the Government, where this fraudulent intention was such that it led the Government to accept the proposal of the company Vitals, with the impression that the said company was in a position to execute what it promised – an impression that eventually was proven to be erroneous since everything dematerialised as soon as the company Vitals started breaching each one of its obligations and milestones that it had accepted.
493. Such fraudulent conduct persisted, not only prior to the granting of the contracts, but also during the whole period when the company Vitals Global Healthcare Limited, with Bluestone Investments Malta Limited as shareholders, was operating, where it clearly emerges, from the volume of evidence produced before this Court, as well as from the detailed reports of the Auditor General, that the financial promises it made all failed whilst the projects that they had to implement, remained incomplete, **where many of them were not even started.** whilst their promised to introduce Medical Tourism in Malta, which promise was certainly that which led the Government of Malta, possibly through ingenuity, to accept the proposals of the company Vitals, was an empty and baseless promise, since it never came to pass and no attempt was made by the company Vitals to implement it. It is clear that using the idea of medical tourism was just part of the set-up and contrivance employed by the investors of the company Vitals Global Healthcare Limited and the said companies Vitals to blind the Government of Malta into conceding the contracts and, in particular, the emphyteutical concession on large properties in Malta and Gozo, that certainly have a much larger speculative value than the medical value.

The Fraudulent Conduct of Steward Malta Limited

494. It transpires, from all the evidence, that the company Steward Malta Limited, through the company Steward Health Care International Limited, on 16 February 2018, acquired the shares of the company Vitals Global Healthcare Limited, and as a result of this, also acquired the shares of the companies Vitals Global Healthcare Assets Limited and Vitals Global Healthcare Management Limited.
495. This Court has no doubt that, at the time, the company Steward Health Care International Limited was well aware of the shortcomings on the part of the company Vitals that it was going to acquire and the obligations they assumed and did not

honour, even in view of the fact that the CEO of Vitals until some time prior, that is Armin Ernst, was now the President of Steward International.

496. Nevertheless, it transpires that from the day that it acquired the shares of the company Vitals, it appears that the company Steward entered into an endless series of agreements with the Government in regard to the financing of the project that, originally, was indicated to be undertaken by foreign banks, but in the end it was undertaken solely by a Maltese bank, that is Bank of Valletta plc, where the Government vouched for them.
497. It transpires, in fact, that by means of these various agreements, the company Steward eventually took four loans in total from Bank of Valletta plc, that is, one of five million Euro (€5,000,000) on 8 May 2018, another of three million Euro (€3,000,000) on 19 September 2018 and another two to the value of twenty two million Euro (€22,000,000) and five million nine hundred thousand Euro (€5,900,000) on 17 July 2019 – all these together make a total of thirty-five million, nine hundred thousand (€35,900,000).
498. It transpires that in all these loan contracts, the Government of Malta vouched for the company Steward, presumably as the owner of the properties that were in the possession of the company Steward.
499. It transpires, however, that by means of a contract signed on **27 March 2019**, the three companies Steward, although well aware of these proceedings before this Court, compelled the Government of Malta to agree to amend the content of the Service Concession Agreement that was signed on 30 November 2015, where the following was agreed:
- (i) if, by way of any Applicable Law or any final order, **judgment** (emphasis by the Court), decision, notice, decree or any other instrument of any Public Body or otherwise, any of the Transaction Agreements are wholly or partially rescinded, terminated, declared to be null or void or invalid, withdrawn, annulled, cancelled, repealed or quashed, such an event shall be deemed to be a Non- Rectifiable GoM Event of Default;*
500. It transpires that, according to Schedule 7 of the Services Concession Agreement, in this case, the Government of Malta is taking up the payment of all the debts with Bank of Valletta plc, of just under thirty-six million Euro (€36,000,000) as well as a penalty of one hundred million Euro (€100,000,000) due to Steward.
- 501. This Court has no doubt that the company Steward was well aware of these proceedings when it involved the Government of Malta in this new obligation and therefore, this Court also has no doubt to declare that these conditions were a result of fraudulent conduct of the company Steward that wanted to turn in its favour the situation caused by a fraudulent action of its predecessors with the aim of making undue gains on the back of the Government of Malta and the Maltese and Gozitan citizens.**

502. The Court states, nevertheless, that it is truly concerned how persons responsible for Government Authorities could ever consciously enter into such onerous obligations for the Government, and would like to believe that this obligation which they assumed, possibly through ingenuity, if not pressure in order that the original project remained viable, but certainly believes that it occurred in view of the fraudulent, and possibly criminal, conduct, both of the company Steward, as now comprised, as well as the company Vitals, as originally comprised and its investors.
503. The Court is certain that no person who has the interests of the country at heart would have entered into such onerous obligations, if not because they were compelled in a fraudulent and deceitful manner, where this burden would lead only for the company Steward to make financial gains over the Government of Malta which are not due to it in any way and therefore is solely blackmail and undue enrichment to the detriment of the citizens.
504. The conduct of the company Steward, in this instance, is truly condemnable and a clear demonstration of non-observance of the obligations it assumed when it acquired the shares in the company Vitals, as well as of the whole judicial process, where, by means of these agreements, it attempted to also influence the final decision of this Court, with the sole aim to make financial gains whilst not honouring the obligations it assumed.

Considered

505. Having considered all of the above, this Court commences by reaffirming that it has no doubt that the company Vitals Global Healthcare Limited, now Steward Malta Limited, as well as the companies Vitals Global Healthcare Assets Limited, now Steward Malta Assets Limited and the company Vitals Global Healthcare Management Limited, now Steward Malta Management Limited were given the Service Concession Agreement of 30 November 2015, the Health Services Delivery Agreement of 30 November 2015, the Labour Supply Agreement of 8 January 2016 and the Emphyteutical Concession of 22 March 2016, **as a result of contrivances and lies solely to corrupt the mind and the evaluation of whoever was responsible to select and decide, where this contrivance was only to the benefit of the company Vitals** Global Healthcare Limited, together with the subsidiary companies Vitals Global Healthcare Assets Limited and the company Vitals Global Healthcare Management Limited, now all property of the company Steward Malta International Limited, to the detriment of the Government of Malta.
506. The Court also has no doubt that, at the time when the company Steward Healthcare International Limited acquired the shares of the company Vitals Global Healthcare Limited, the contractual obligations and the milestones that the companies Vitals had committed to comply with, were not achieved in any way, with the result that the Government of Malta was obliged not to accept any transfer of shares to Steward Healthcare International Limited, and instead had to proceed to demand the rescission of all the contracts on the basis of non-fulfilment by the company Vitals.

507. The Court also has no doubt that the Government of Malta, together with the other competent authorities summoned in this cause, had the obligation and duty to rescind all the contracts, in view of the contrivances and fraudulent conduct embraced systematically by the companies Vitals and Steward. and therefore;

508. The Court therefore also has no doubt that it was the applicant's duty, as a member of the House of Representative, elected in order to represent, defend and promote the interest of the citizens, that in the absence of action on the part of the competent authorities, to make use of the tools provided to him in Article 33 of Cap. 573 of the Laws of Malta and request the rescission of the Emphyteutical Concession of 22 March 2016, together with all the agreements concluded prior to this Concession, all specified as Related Instruments, where these agreements should be considered as an integral part of the emphyteutical concession dated 22 March 2016.

509. Therefore, this Court deems that the applicant's action, as premised, and as proven, merits to be admitted.

Conclusion

The Court,

Having heard the witnesses presented and having seen the volume of documentation brought before it;

Having regard to the submissions in writing of the skilful defence counsels of the parties;

Having heard the final treatise of the said skilful defence counsels of the parties;

Having well established and scrutinised the facts of the cause, and

Having made its considerations in detail;

Proceeds to pronounce and decide the dispute by:

Refuting all the objections of all the respondents.

Admitting the applicant's demand as compiled, and therefore:

Declares that the Services Concession Agreement of 30 November 2015, the Health Services Delivery Agreement of 30 November 2015 and the Labour Supply Agreement of 8 February 2016, together with the various amendments and addenda made, should be considered as forming an integral part of the temporary Emphyteutical Concession conceded to the company Steward Malta Assets Limited, formerly Vitals Global Healthcare Assets Limited, of 22 March 2016 in the records of Notary Dr Thomas Vella.

Declares that the respondents Steward Malta Assets Limited, Steward Malta Limited and Steward Malta Management Limited did not fulfil and breached their obligations pursuant to the contract of 22 March 2016 as well as the Services Concession Agreement of 30 November

2015, the Health Services Delivery Agreement of 30 November 2015 and the Labour Supply Agreement of 8 February 2016 together with the amendments and addenda made subsequently.

Declares that the Chief Executive of the Lands Authority who assumed the functions previously assumed by the Commissioner of Land, and the Chairman of the Board of Governors of the Lands Authority, as well as the Attorney General, are obliged, according to law, to safeguard public property and to take the necessary steps to ensure that all the conditions of the conceded property are fulfilled and unchanged according to the said contracts and the resolution of the House of Representatives, and therefore:

Cancels and annuls the temporary Emphyteutical Concession in the records of Notary Thomas Vella of 22 March 2016 as well as the Services Concession Agreement of 30 November 2015, the Health Services Delivery Agreement of 30 November 2015 and the Labour Supply Agreement of 8 February 2016, together with the various amendments and addenda made and that form an integral part of the above-mentioned temporary emphyteutical concession,

Orders that all the property where the sites of **St Luke's Hospital**, St Luke's Road, Pieta, with an area of 54,728 square metres, **Karin Grech Rehabilitation Hospital** in St Luke's Road, Pieta, with a superficial area of 768 square metres and **Gozo General Hospital**, of 72,880.92 square metres in Triq l-Isqof Pietro Pace, Rabat, Gozo as better described in the above-mentioned emphyteutical concession be returned to the said Chief Executive of the Lands Authority.

Appoints the Government Principal Notary to publish the relative deed for the cancellation and invalidity of the said temporary emphyteutical concession within three months from today.

Reserves to appoint deputy curators to represent the Chief Executive of the Lands Authority, the Chief Executive Officer of Malta Industrial Parks Limited and the Government of Malta and/or Vitals Global Healthcare Assets Limited on the cancellation and invalidity deed of the said emphyteutical concession in the event that this is requested after the judgement is passed.

Costs of these proceedings and of the notarial deeds required for the fulfilment of this decision shall all be borne by the company Steward Malta Limited.

Francesco Depasquale
Judge

Rita Vella
Baldacchino Deputy
Registrar