



**QORTI ĊIVILI  
PRIM' AWLA**

**ONOR IMHALLEF  
DR FRANCESCO DEPASQUALE  
LL.D. LL.M. (IMLI)**

**Seduta ta' nhar il-Ġimgħa  
Erbgħa u ghoxrin (24) ta' Frar 2023**

**Rikors Numru 133/2018 FDP**

Fl-ismijiet

**L-Onorevoli Kap tal-Opposizzjoni l-Avukat Dottor Adrian Delia  
(ID 299369M)**

Vs

**Onorevoli Prim Ministru ta' Malta, Dr Joseph Muscat**

**L-Avukat Ġenerali**

**Il-Kap Eżekuttiv tal-Malta Industrial Parks Limited, li permezz ta' digriet datat 16 ta'  
Novembru 2021 biddlet isimha għal INDIS Malta Ltd.,**

**Vitals Global Healthcare Assets Limited li permezz ta' digriet datat 16 ta' Novembru  
2021 biddlet isimha għal Steward Malta Assets Limited**

**Vitals Global Healthcare Limited li permezz ta' digriet datat 16 ta' Novembru 2021  
biddlet isimha għal Steward Malta Limited**

**Vitals Global Healthcare Management Limited li permezz ta' digriet datat 16 ta'  
Novembru 2021 biddlet isimha għal Steward Malta Management Limited**

**Il-Kap Eżekuttiv tal-Awtorita' tal-Artijiet li assumu l-funzjonijiet li qabel kien jassumi  
l-Kummissarju tal-Artijiet**

**Iċ-Chairman tal-Bord tal-Gvernaturi tal-Awtorita' tal-Artijiet**

## II-Qorti:-

1. Rat ir-rikors datat 19 ta' Frar 2018, li permezz tiegħu r-rikorrent Dr Adrian Delia, bhala Kap tal-Oppozizzjoni u Membru tal-Kamra tar-Rapprezentanti, talab is-segwenti:

1. *Illi b' kuntratt ta' emfitewsi temporanja tal-22 ta' Marzu 2016, fl-atti tan-Nutar Thomas Vella, bejn min-naħa l-waħda il-Malta Industrial Parks Limited, u l-Kummissarju tal-Artijiet, in rappreżentanza tal-Gvern ta' Malta, u min-naħa l-oħra Vitals Global Healthcare Assets Limited, ġew ittrasferiti b'titolu ta' konċessjoni enfitewtika temporanja għal perjodu rinnovabbli ta' tletin (30) sena, numru ta' siti ġewwa Malta u Għawdex, ċioe' is-sit tal-Isptar San Luqa, is-sit tal-Isptar Karin Grech, kif ukoll is-sit tal-Isptar Ġenerali t'Għawdex, u dan għall-iskopijiet hemm indikati liema kuntratt huwa hawn anness u mmarkat bhala "Dokument A".*
2. *Illi ai termini konċessjoni emfitewtika temporanja suriferita ġie stipulat ai termini ta' klawzola 4.5.2.2 (e), ġie stabbilit illi,*

*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. *Illi r-Related Instruments huma s-Service Concession Agreement, il-Health Services Delivery Agreement, the Labour Supply Agreement and any amendments and/or addendum thereto liema dokumenti jiffurmaw integrali tal-konċessjoni enfitewtika temporanja surreferita liema dokumenti huma hawn annessi u mmarkati bhala "Dokumenti B u C".*
4. *Illi kopja ta' dawn ir-Related Instruments li tpogġew fuq il-Mejda tal-Kamra tad-Deputati fis-seduta numru 429 tad- 19 ta' Ottubru 2016.*
5. *Illi l-iskopijiet għal dan it-trasferiment ta' proprjeta' kif jirriżulta mill-kuntratt ta' enfitewsi temporanja hawn fuq riferit ai termini ta' klawzola 4.3.1 huwa "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. *Illi d-Development Obligations huma l-obbligi ta' Vitals Global Healthcare Assets Limited (C70625) u tal-Concessionaire ossija Vitals Global Healthcare Management Limited (C 70624) u Vitals Global Healthcare*

*Limited (C 70546) biex jassigura illi dak kollu li kellu jsir mill-Concessionaire jigi attwat skond is-Services Concession Agreement fir-rizvilupp tassiti mogħtija b'konċessjoni emfitewtika temporanja odjerna.*

7. *Illi s-Service Concession Agreement huwa l-ftehim milhuq bejn il-Gvern, il-konċessjonarju u l-emfitewta għall-iżvilupp tal-isptarijiet skond il-ftehim raġġunt.*
8. *Illi konsegwentement l-intimati kollha kienu in solidum bejniethom obbligati illi jattwaw l-obbligi kif naxxenti mill-konċessjoni emfitewtika temporanja.*
9. *Illi dawn l-obbligi kienu jikkonsistu fost affarijiet oħra fil-bini ta' skola medika, u faċilitajiet ta' taġħlim b'konsultazzjoni mal-Gvern Malti, l-iżvilupp u l-kreazzjoni ta' state of the art, riċerka u faċilitajiet ta' żvilupp fis-settur tas-saħħa, u f' medical campus f' Malta u Għawdex, il-kostruzzjoni u l-operazzjoni ta' regional primary care hub fl-Isptar Ġenerali ta' Għawdex, ir-rizvilupp tal-Isptar Ġenerali ta' Għawdex u l-kreazzjoni ta' medical campus f' Malta u Għawdex u l-immodernizzar tal-Isptar Ġenerali ta' Għawdex;*
10. *Illi dan kollu kellu jsir a bażi ta' Health Services Delivery Agreement u tas-Services Concession Agreement, hawn annessi u mmarkati bħala Dokument B it-tnejn iffirmati fit-30 ta' Novembru 2015 skont dokument imqiegħed fuq il-Mejda tal-Kamra tad-Deputati fis-seduta numru 429 tad-19 ta' Ottubru tas-sena 2016, "Dokument D" hawn anness;*
11. *Illi dawn il-Ftehim jirregolaw il-konċessjoni tas-servizzi fl-isptarijiet indikati fil-konċessjoni enfitewtika temporanja hawn fuq riferita, u jiffurmaw parti integrali mill-konċessjoni enfitewtika temporanja mogħtija nhar it-22 ta' Marzu 2016 kif jirriżulta mill-istess konċessjoni emfitewtika temporanja ai termini ta' l-Artikolu 4.3 tal-istess kuntratt, Dokument A hawn anness.*
12. *Illi dan ir-rimpjazzament, bini u servizzi li kellhom jibdew jigu mogħtija minn Vitals Global Healthcare Limited u Vitals Global Healthcare Management Limited ai termini ta' concession agreement hawn fuq imsemmi, kellhom isiru skont completion milestones ossia handover plans, design plans, Barts College fil-Kampus ta' Għawdex, ħamsin (50) sodda addizzjonali f' Karin Grech Hospital, San Luqa, tmenin (80) sodda ta' riabilitazzjoni f' Saint Luke's Hospital, it-tlestija tal-binja l-ġdida fl-Isptar Ġenerali ta' Għawdex, it-tlestija tar-rinovazzjoni tal-Isptar Ġenerali ta' Għawdex, u t-tlestija tas-sodod għat-turizmu mediku fl-Isptar San Luqa jitlestew fit-termini stabbiliti u mhux magħrufa lill-pubbliku, pero żgur qabel l-iskadenza ta' tliet snin mill-iffirrnar tal-istess Ftehim tat-30 ta' Novembru 2015.*
13. *Illi dawn il-completion milestones ma ntlahqux u lanqas għadhom inbdew jigu effettwati u wisq inqas kompletati.*
14. *Illi konsegwentement l-iskop għal xiex giet mogħtija din il-konċessjoni enfitewtika temporanja ma twettqitx fl-essenzjal tagħha, u dan skond ir-Riżoluzzjoni Parlamentari hawn fuq referita.*

15. Illi ai termini ta' klawwola 15.1 tas-*Services Concession Agreement* li jiffirma parti integrali tal-konċessjoni emfitewtika temporanja u r-raġuni għaliex giet mogħtija din il-konċessjoni emfitewtika temporanja skond klawwola 4.3 tal-istess kuntratt hawn imsemmi, l-intimati *Vitals Global Healthcare Limited* u *Vitals Global Healthcare Management Limited*, kellhom id-dritt li jassenjaw l-obbligi tagħhom wara l-perijodu ta' tliet (3) snin mid-data ta' tlestija ossia mid-data meta ċertifikat ta' tlestija li jikkonferma li l-concession milestones intlaħqu, u li x-xogħol tlesta, u dawn iż-żewġ kumpanniji hawn imsemmija bħala konċessjonarji ma setgħux jittrasferixxu, jassenjaw, jew b'xi mod ieħor jiddisponu mill-ishma u/jew mill-ishma tas-sussidjarji tagħhom.
16. Illi minn dawn il-ftehim għadhom m'għaddewx it-tliet snin stipulati mil-ligi wisq inqas tlett snin mit-tlestija tal-completion milestones assoċjati mat-tlestija tax-xogħlijiet fuq is-siti kif hawn fuq imsemmija u elenkati, u lanqas ma thallsu l-ebda penaltajiet skont l-iskeda numru 6 paġna 124 tas-*Services Concession Agreement*.
17. Illi konsegwentement ai termini tal-konċessjoni emfitewtika temporanja surreferita dan it-trasferiment ta' bejgħ ta' azzjonijiet lil terzi u/jew trasferiment ta' proprjeta' ma jistax jiġi awtorizzat għax ma ntlaxqux il-completion milestones għat-tlestija tax-xogħlijiet fuq is-siti ai termini tal-ftehim raġġunt bil-konċessjoni emfitewtika temporanja u s-*Services Concession Agreement* iffirrat bejn l-intimati.
18. Illi l-Kap Eżekuttiv tal-Awtorita' tal-Artijiet u l-Avukat Ġenerali ma jistax japprova dan it-trasferiment ta' art lil terzi ai termini tal-Artikolu 4.7 tal-konċessjoni emfitewtika għaladarba l-obbligi tal-emfitewta ma ġewx adempiti ai termini tal-istess kuntratt.
19. Illi fi kwalunkwe każ il-Kap Eżekuttiv tal-Awtorità tal-Artijiet u l-Avukat Ġenerali jridu jassiguraw illi d-dettami tal-konċessjoni emfitewtika temporanja u l-kundizzjonijiet hemm stipulati jiġu hekk adempiti kif stipulati fl-istess kuntratt ta' konċessjoni emfitewtika li tagħmel referenza għal dan is-*Service Concession Agreement* u l-*Health Services Delivery Agreement* u huwa parti integrali mill-istess konċessjoni emfitewtika temporanja.
20. Illi bi protest ġudizzjarju tad-29 ta' Jannar 2018, "Dokument E" hawn anness ir-rikorrenti talbu illi jekk il-Kap Eżekuttiv tal-Awtorità tal-Artijiet u l-Avukat Ġenerali mhux ser jieħu l-azzjoni neċessarja skont il-ligi għall-adempiment tal-obbligi kif naxxenti mill-istess konċessjoni emfitewtika temporanja, "Dokument A" fil-proċess u s-*Services Concession Agreement*, huwa jkun qiegħed jonqos li jipprotegi l-proprjeta' tal-pubbliku u l-interessi li l-istess pubbliku fl-iżviluppi li kellhom isiru fuq is-siti tal-isptarijiet liema obbligu jemani mill-kawtela ta' drittijietom u fin-nuqqas ta' l-obbligi tal-emfitewta u dan ai termini tal-Kap. 573 tal-Ligijiet ta' Malta.
21. Illi fi kwalunkwe każ, u mingħajr preġudizzju għas-suespost, f'kull każ u f'kull eventwalita' u wara li jgħaddu t-tlett snin mill-concession milestones irid jiġi assikurat illi bit-trasferiment ta' dawn id-drittijiet u obbligi lil kwalsiasi terza persuna, u dan kif stabbilit mill-istess Ftehim, il-persuna li lilha ġew trasferiti

*dawn id-drittijiet għandha tkun persuna ta' good standing u ta' reputazzjoni tajba, u qabel ma dan isir, il-Gvern Malti għandu jiġi infurmat mhux aktar tard minn tliet xhur qabel tali trasferiment, u għandu jagħti d-dettalji kollha rigwardanti dan it-trasferiment liema dettalji għandhom jiġu skrutinizzati mill-Kamra tad-Deputati.*

22. *Illi għaladarba l-Avukat Ġenerali u l-Kap Eżekuttiv tal-Awtorita' tal-Artijiet mhux ser jieħdu l-passi neċessarji ai termini tal-liġi, ossia tal-Kap. 573 tal-Liġijiet ta' Malta, biex jassiguraw li Vitals Global Healthcare Assets Limited qabel ma jittentaw jittrasferixxu il-konċessjoni enfiwewtika temporanja surreferita lil terzi jassiguraw illi huma jadempixxu l-obbligi skont il-Ftehim approvat mill-Kamra tad-Deputati, kemm rigwardanti l-kuntratt ta' konċessjoni enfiwewtika temporanja tat-22 ta' Marzu 2016 fl-atti tan-Nutar Dottor Nicholas Vella u l-Ftehim tat-30 ta' Novembru 2015, sia rigwardanti l-Health Services Delivery Agreement u s-Services Concession Agreement, irrikorrenti huma obbligati jaġixxu fl-interess tal-poplu Malti ai termini tal-Kap. 573 tal-Liġijiet ta' Malta għat-tutela tal-proprjeta' pubblika u tal-pattijiet u kundizzjonijiet approvati mill-istess Kamra tad-Deputati.*

*Jgħidu għalhekk l-intimati jew min minnhom prevja kwalsiasi dikjarazzjoni neċessarja u opportuna u għar-raġunijiet premessi għaliex din il-Qorti m'għandhiex:*

- (I) *Tiddikjara u tiddeċiedi illi l-intimati Vitals Global Healthcare Assets Limited, Vitals Global Healthcare Limited u Vitals Global Healthcare Management Limited ma adempewx u kissru l-obbligi tagħhom ai termini tal-kuntratt tat-22 ta' Marzu 2016 fl-atti tan-Nutar Dottor Thomas Vella u tas-Service Concession Agreement, il-Health Services Delivery Agreement, the Labour Supply Agreement u emendi u/jew addendum liema dokumenti jiffurmaw parti integrali tal-konċessjoni enfiwewtika temporanja surreferita.*
- (II) *Tiddikjara u tiddeċiedi illi r-Related Instruments jiffurmaw parti integrali tal-konċessjoni enfiwewtika temporanja tat-22 ta' Marzu 2016 fl-atti tan-Nutar Dottor Thomas Vella.*
- (III) *Tiddikjara u tiddeċiedi illi l-Kap Eżekuttiv tal-Awtorita' tal-Artijiet li assumu l-funzjonijiet li qabel kien jassumi l-Kummissarju tal-Artijiet u ċ-Chairman tal-Bord tal-Gvernaturi tal-Awtorita' tal-Artijiet u lill-Avukat Ġenerali huma f'obbligu ai termini tal-liġi biex jittutellaw il-proprjeta' pubblika u biex jieħdu l-passi neċessarji sabiex jassiguraw illi l-kundizzjonijiet kollha tal-proprjeta' konċessa mill-Kap Eżekuttiv ta' l-Awtorita' tal-Artijiet jiġu adempiti u mhux mibdula ai termini ta' l-istess kuntratti u tar-resoluzzjoni tal-Kamra tad-Deputati.*
- (IV) *Thassar u tannulla l-konċessjoni enfiwewtika temporanja fl-atti tan-Nutar Thomas Vella tat-22 ta' Marzu 2016 u tar-Related Instruments li jiffurmaw parti integrali tal-konċessjoni enfiwewtika temporanja surreferita u tordna li tintradd lura l-proprjeta' kollha fejn jinsabu s-siti ta' St. Luke's Hospital St. Luke's Road Pieta, b'arja 54,728 metri kwadri, il-Karin Grech*

*Rehabilitation Hospital f' St. Luke's Road Pieta, b'arja superfiċjali ta' 768 metri kwadri u l-Gozo General Hospital ta' 72880.92 metri kwadri fi Triq I-Isqof Pietro Pace, Rabat, Għawdex kif aħjar deskritti fil-konċessjoni enfitewtika surreferita lill-istess Kap Eżekuttiv tal-Awtorita' tal-Artijiet.*

- (V) *Tinnomina Nutar biex jippubblika l-att relattiv tat-tħassir u nullita' tal-imsemmija konċessjoni enfitewtika temporanja f'jum, ħin u lok kif stabbilit minn din il-Qorti.*
- (VI) *Tinnomina kuraturi deputati biex jirrappreżentaw lill-Kap Eżekuttiv tal-Awtorita' tal-Artijiet, lic-Chief Executive Officer tal-Malta Industrial Parks Limited u lill-Gvern ta' Malta u/jew Vitals Global Healthcare Assets Limited fuq l-att ta' tħassir u nullita' tal-imsemmija konċessjoni enfitewtika fl-atti tan-Nutar Dottor Thomas Vella tat-22 ta' Marzu 2016.*

*Bl-ispejjeż inkluż tal-protest tad-29 ta' Jannar 2018 u bl-ingunzjoni tal-intimati in subizzjoni.*

2. Rat id-dokumentazzjoni eżebita mir-rikorrent flimkien mar-rikors promotur, ossija:
- Kuntratt ta' konċessjoni emfitewtika datata 22 ta' Marzu 2016 fl-atti tan-Nutar Thomas Vella, bejn Malta Industrial Parks Limited u l-Kummissarju tal-Artijiet, minn naħa, u Sir Ram Tumuluri għan-nom u in rappreżentanza tas-soċjeta' Vitals Global Healthcare Assets Limited. (fol 8)
  - Health Services Delivery Agreement datat 30 ta' Novembru 2015 li sar permezz ta' skrittura privata bejn il-Gvern ta' Malta u Vitals Global Healthcare Management Limited. (fol 41 sa 166)
  - Labour Supply Agreement, datat 8 ta' Jannar 2016, li sar permezz ta' skrittura privata bejn il-Gvern ta' Malta u Vitals Global Healthcare Management Limited. (fol 167 sa 179)
  - Protest Ġudizzjarju datat 29 ta' Jannar 2018 intavolat fil-Prim' Awla tal-Qorti Ċivili, mir-rikorrent flimkien mal-Membri Parlamentari kollha eletti għall-Partit Nazzjonalista. (fol 181 - 185)
3. Rat illi fis-6 ta' Marzu 2018, il-**Kap Eżekuttiv tal-Awtorita' tal-Artijiet u ċ-Chairman tal-Bord tal-Gvernaturi tal-Awtorita' tal-Artijiet** laqgħu għal dak mitlub billi qajjmu s-segwenti difiżi: (fol 193)
- Preliminarjament, l-eċċipjenti mhumiex il-legittimi kuntraditturi u għandhom jinħelsu mill-osservanza tal-ġudizzju u dan peress li:*
    - il-poteri vestiti fil-Kummissarju tal-Artijiet ai termini ta' Kapitolu 169 (abrogat) ġew vestiti fl-Awtorita' tal-Artijiet li għandha personalita' legali u distinta (Artikolu 6(1) tal-Kapitolu 563) u l-poteri tal-Awtorita' tal-Artijiet ġew vestiti fil-Bord tal-Gvernaturi (Artikolu 6(2) tal-Kapitolu 563);*

- b. fuq l-art mertu tal-kawża odjerna, permezz ta' żewġ ligijiet sussidjarji, L.S. 94/16 u L.S. 95/16 dokumenti annessi Dok. A u Dok. B rispettivament, il-poteri u l-obbligi riservati bil-Liġi lill-Kummissarju tal-Artijiet (Kapitolu 169 abrogat) ġew vestiti ope legis fil-Malta Industrial Parks. Din il-posizzjoni ġiet kristalizzata bl-artikolu 4 ta' Kapitolu 573 tal-Liġijiet ta' Malta tant illi anke jekk l-eċċipjenti kellhom jagħmlu xi ħaġa, legalment huma prekluzi milli jagħmluha.
2. Illi mingħajr preġudizzju għas-suespost, din l-azzjoni ippernjata fuq l-Artikolu 33(2) tal-Kapitolu 573 għandha tfalli peress li dan l-artikolu jagħti dritt limitat lill-Avukat Ġenerali jew Membru Parlamentari li jitolbu t-tħassir tat-trasferiment, meta dan it-trasferiment innifsu jkun sar bi ksar tal-artikolu 31 ta' Kapitolu 573. L-istess artikolu ma jagħtix ukoll id-dritt sabiex tiġi ntavolata kawża meta jkun allegat inadempiment kuntrattwali kif inhi mpostata l-kawża odjerna;
  3. Illi mingħajr preġudizzju għas-suespost f'kull każ it-talbiet attriċi huma nfondati fil-fatt u fid-dritt;
  4. Salv eċċezzjonijiet ulterjuri.
  5. Bl-ispejjeż.
4. Rat id-dokumentazzjoni eżebita Kap Eżekuttiv tal-Awtorita' tal-Artijiet u ċ-Chairman tal-Bord tal-Gvernaturi tal-Awtorita' tal-Artijiet, ossija l-Avviż Legali Nru 94 tas-sena 2016 u l-Avviż Legali Nru 95 tas-sena 2016, it-tnejn maħruġa a tenur tal-Ordinanza dwar il-Kummissarju tal-Artijiet (Kap 169), u intitolati “*Commissioner of Land (Transfer of Rights and Liabilities) (No. 4) Order 2016*” u “*Commissioner of Land (Transfer of Rights and Liabilities) (No. 4) (Amendments) Order 2016*” rispettivament. (fol 195 u fol 196)
  5. Rat illi fid-9 ta' Marzu 2018, l-**Onorevoli Prim Ministru** kif ukoll l-**Avukat Ġenerali** laqgħu għal dak mitlub billi qajjmu s-segweni difiżi: (fol 201)
    1. Illi in linea preliminari, l-esponenti Onorevoli Prim Ministru u Avukat Ġenerali mhumieq il-leġittimi kontraditturi għall-azzjoni ai termini tal-Artikolu 181B tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili (Kap. 12 tal-Liġijiet ta' Malta) u għandhom, ukoll jekk għal din ir-raġuni biss, jiġu liberati mit-talbiet.
    2. Illi in linea preliminari wkoll, l-esponenti jeċċepixxu n-nuqqas ta' applikabbilita' tal-Artikolu 33 tal-Att dwar Artijiet tal-Gvern (Kapitolu 573 tal-Liġijiet ta' Malta) għal dak allegat mill-attur u konsegwentement in nuqqas ta' locus standi tal-attur biex jesperixxi din l-azzjoni. Dan peress illi dik id-disposizzjoni tapplika biss u hija ċirkoskritta esklussivament għall-mument tat-trasferimenti ta' art u ċioe' għall-kwistjoni dwar jekk it-trasferiment tal-art sarx bi tħaris tad-disposizzjonijiet tal-Artikolu 31 tal-Kap. 573 tal-Liġijiet ta' Malta. Illi l-Artikolu 33 tal-Kap. 573 tal-Liġijiet ta' Malta ma jaħsibx għall-azzjoni

*għad-dikjarazzjoni tan-nullita' u/jew għall-annullament ta' trasferimenti ta' ishma f'soċjetajiet kummerċjali jew għal azzjonijiet dwar l-allegata inadempjenza kontrattwali tal-kondizzjonijiet ta' kuntratt konkluz skont l-Att dwar Artijiet tal-Gvern. Għall-kuntrarju l-artikolu 33 japplika biss dwar trasferimenti ta' art li ma jsirux bi tħaris tal-Artikolu 31 tal-Kap. 573. Illi, kuntrarjament ukoll għal dak li jippretendi, r-rikorrent attur ma nġhata l-ebda fakolta' speċjali mill-Kap. 573 ta' sorveljanza tal-eżekuzzjoni ta' obbligi kontrattwali fil-kors ta' enfitewsi tramite azzjoni ġudizzjarja u dan jirrendi lil din l-azzjoni irritwali u irreċevibbli.*

3. *Illi in linea preliminari wkoll u mingħajr preġudizzju għas-suespost, in-nuqqas ta' locus standi u ta' interess ġuridiku tar-rikorrent attur in kwantu l-Artikolu 33 tal-Kap. 573 peress illi l-azzjoni kif postulata biex timpunja trasferiment ta' assi f'soċjeta' kummerċjali u biex tannulla trasferiment ta' art abbażi ta' allegata inadempjenza kontrattwali setgħet tispetta biss se mai lill-partijiet firmatarji tal-kuntratti mertu tal-azzjoni odjerna iżda mhux lir-rikorrent attur.*
4. *Illi in linea preliminari wkoll u mingħajr preġudizzju għas-suespost, l-esponenti jeċċepixxu n-nuqqas ta' fundament ġuridiku għall-azzjoni odjerna da parti tar-rikorrent in kwantu l-istess azzjoni hija bbażata fuq konfużjoni bejn it-trasferiment ta' art u t-trasferiment ta' azzjonijiet f'soċjeta' kummerċjali li huma fil-fatt żewġ affarijiet distinti u separati kemm fattwalment kif ukoll ġuridikament;*
5. *Illi mingħajr preġudizzju għas-suespost, kemm is-Service Concession Agreement u l-Health Services Delivery Agreement għad illi huma relatati mal-konċessjoni enfitewtika ma jiffurmawx parti mill-istess konċessjoni enfitewtika temporanja iżda jikkostitwixxu kuntratti dwar l-għoti ta' servizzi li huma separati u distinti mit-trasferiment tal-art u dan tant hu hekk li dawn iż-żewġ agreements saru qabel il-kuntratt pubbliku li bih giet trasferita l-art liema trasferiment sar bi tħaris tad-disposizzjonijiet tal-Kap. 573 tal-Liġijiet ta' Malta;*
6. *Illi salv is-suespost, it-talbiet tal-attur huma nfondati fil-fatt u fid-dritt u għandhom jiġu miċħuda.*
7. *Salvi eċċezzjonijiet oħra jekk ikun il-każ.*

*Bl-ispejjeż.*

6. Rat illi fid-9 ta' Marzu 2018, il-Kap Eżekuttiv tal-Malta Industrial Parks Limited laqa' għal dak mitlub billi qajjem is-segwenti difiżi: (fol 205)
  1. *Illi preliminarjament, l-esponenti fil-kariga tiegħu premissa m'għandux setgħa li jaqdi xi funzjoni pubblika u kwindi mhuwiex leġittimu kuntradittur u għandu jiġi liberat mill-osservanza tal-ġudizzju;*
  2. *Illi subordinatament u mingħajr preġudizzju għall-premess, iżda dejjem in linea preliminari, illi l-azzjoni tar-rikorrenti hija monka stante li priva minn raġuni tat-talba kif irid l-Art. 156 tal-Kap. 12 u wisq anqas jingħad*



*fuq liema dispożizzjoni tal-liġi qiegħed jibbaża l-lanjanzi tiegħu u kwindi l-esponenti mhux f'pożizzjoni li jiddefendi ruħu sew u għalhekk it-talba għandha tiġi miċħuda;*

3. *Illi subordinatament u mingħajr preġudizzju għall-premess, iżda dejjem in linea preliminarjari, illi r-rikorrenti m'għandux l-interess ġuridiku li trid il-liġi sabiex jeżerċita l-azzjoni odjerna u għalhekk it-talba għandha tiġi miċħuda;*
4. *Illi subordinatament u mingħajr preġudizzju għall-premess, iżda dejjem in linea preliminarjari, kemm-il darba l-azzjoni attriċi hija bbażata fuq id-dispożizzjonijiet tal-Art. 33 tal-Kap. 573, il-karenza ta' locus standi tal-attur billi tali dispożizzjoni ma tistax tiġi invokata sabiex jiġi sindikat l-adempjenza o meno ma' obbligi kuntrattwali naxxenti minn kuntratti ta' art pubblika;*
5. *Illi subordinatament u mingħajr preġudizzju għall-premess, iżda dejjem in linea preliminarjari, in kwantu l-azzjoni tattakka ftehim kummerċjali liema kuntratti huma res inter alios acta għar-rikorrenti u indipendenti mill-konċessjoni qua trasferiment, ir-rikorrenti m'għandu ebda interess u/jew jedd li jitlob xi intervent ġudizzjarju u t-talbiet f'dan ir-rigward għandhom jiġu miċħuda;*
6. *Illi subordinatament u mingħajr preġudizzju għall-premess, m'hemm l-ebda nuqqas jew ksur fir-rigward tal-konċessjoni mertu tal-kawża;*
7. *Illi subordinatament u mingħajr preġudizzju għall-premess, it-talbiet tal-attur huma infondati fil-fatt u fid-dritt u għandhom jiġu miċħuda;*
8. *Salvi eċċezzjonijiet ulterjuri.*

*Bl-ispejjeż.*

7. Rat illi fis-27 ta' Marzu 2018, is-soċjetajiet intimati **Vitals Global Healthcare Assets Limited, Vitals Global Healthcare Limited** u **Vitals Global Healthcare Management Limited**, laqgħu għal dak miltub billi qajjmu s-segweni difiżi: (fol 212)

1. *Illi, preliminarjament, jiġi rilevat li r-Rikors Ġuramentat tal-attur huwa in situ u null a tenor tal-Artikolu 789(1)(a) tal-Kapitolu 12 tal-Liġijiet ta' Malta, u dan b'referenza għal dak provdut fl-Artikolu 156(1) (a) tal-Kapitolu 12 tal-Liġijiet ta' Malta u dan illi r-rikors promotur ma fihx "dikjarazzjoni li tfisser b'mod ċar u sewwa l-oġġett tal-kawża" senjatament in vista tal-fatt li għalkemm ir-rikorrent jagħmel referenza ġenerika għall-Kap 573 tal-Liġijiet ta' Malta ma jispeċifikax taħt liema artikolu qed jibbaża l-azzjoni tiegħu, liema nuqqas iqiegħed l-esponenti f'pożizzjoni tali li ma jistgħux jiddefendu ruħhom kif imisshom;*
2. *Illi subordinatament u mingħajr preġudizzju għall-premess, iżda dejjem in linea preliminarjari, ir-rikorrent għandu jipprova l-interess ġuridiku tiegħu biex jipproponi u jmexxi din il-kawża;*

3. *Illi subordinatament u mingħajr preġudizzju għall-premess, iżda dejjem in linea preliminari, prinċipju ġenerali tal-Liġijiet tagħna hu li kuntratt li fih persuna ma tkunx parti, hu inter alios acta għaliha u għaldaqstant il-kuntratti msemmijin fir-rikors promotur huma inekwivokabilment res inter alios acta għar-rikorrent.*
4. *Illi subordinatament u mingħajr preġudizzju għall-premess, m'hemm l-ebda nuqqas kontrattwali u lanqas ksur fir-rigward tal-konċessjoni mertu tal-kawża;*
5. *Illi subordinatament u mingħajr preġudizzju għall-premess, it-talbiet tal-attur huma infondati fil-fatt u fid-dritt u għandhom jiġu miċhuda;*
6. *Salvi eċċezzjonijiet ulterjuri.*

*Bl-ispejjeż.*

8. Rat illi fl-10 ta' Mejju 2018, l-intimati Prim Ministru, Avukat Ġenerali u Awtorita' tal-Artijiet talbu li tiġi deċiża l-eċċezzjoni tagħhom preliminari dwar l-impossibiltà tal-azzjoni odjerna a tenur tal-Artikolu 573, liema talba giet miċhuda mill-Qorti, diversament ippresjeduta, dakinhar stess. (fol 221-222)
9. Rat illi fl-14 ta' Mejju 2018, ir-rikorrent talbu li jingħataw l-possibiltà li jappellaw minn tali deċiżjoni (fol 223), liema talba intlaqgħet mill-Prim' Istanza fis-seduta tat-28 ta' Mejju 2018. (fol 241)
10. Rat illi fit-28 ta' Mejju 2018, is-soċjetajiet intimati Vitals talbu illi l-proċedimenti jitkoplew bil-magħluq u b' divjet fuq il-pubblikazzjoni (fol 235-238), liema talba giet miċhuda mill-Qorti wara illi semgħet il-partijiet jittrattaw waqt is-seduta tat-28 ta' Mejju 2018 stess. (fol 239-240)
11. Rat illi fit-28 ta' Mejju 2018, il-kawża giet differita Sine Die sakemm tiġi deċiża l-kwistjoni mqajjma quddiem il-Qorti tal-Appell.
12. Rat illi fid-29 ta' Marzu 2019, il-Qorti tal-Appell ċaħdet it-talba ta' l-intimati sabiex tiġi kkunsidrata u meqjusa l-ewwel eċċezzjoni tagħhom qabel ma l-Qorti tisma' x-xhieda fuq il-meritu.
13. Rat illi fid-29 ta' Marzu 2019, sar rikors da' parte tar-rikorrent sabiex il-kawża terġa' titqiegħed fuq il-lista tal-kawżi, liema digriet intlaqa' fit-3 ta' April 2019.

## **PROVI**

14. Rat illi fis-26 ta' April 2019, ir-rikorrent **Dr Adrian Delia**, ippreżenta l-affidavit tiegħu, flimkien ma' dokumentazzjoni.
15. Rat ix-xhieda ta' **Albert Gauci Cunningham**, editur tal-gazzetta Illum, mogħtija fis-26 ta' April 2019 u rat id-dokumentazzjoni minnu eżebiti, ossija artikoli minnu redatti.
16. Rat illi dina l-Qorti, kif komposta, hadet konjizzjoni tal-atti fis-17 ta' Ottubru 2019.

17. Semgħet ix-xhieda ta' **Ray Grillo**, rappreżentant tal-Iskrivan tal-Kamra tar-Rappreżentanti, illi ppreżenta l-kuntratti mqieghda fuq il-Mejda tal-Kamra tad-Deputati fis-seduta tad-19 ta' Ottubru 2016, lkoll b'partijiet tagħhom mhassra, liema dokumentazzjoni giet ppreżentata mill-Ministru għas-Saħħa Dr Konrad Mizzi. (fol 317 sa 470) ossija:
  - a. **Service Concession Agreement** iffirmit fit-30 ta' Novembru 2015. (fol 318 sa 388)
  - b. **Health Services Delivery Agreement** iffirmit fit-30 ta' Novembru 2015. (fol 389 sa 463)
  - c. **Labour Supply Agreement** iffirmit fit-8 ta' Jannar 2016. (fol 464 sa 470)
18. Rat illi fis-26 ta' Novembru 2019, giet ippreżentata kopja legali tal-**Kuntratt ta' Konċessjoni Enfitewtika** tat-22 ta' Marzu 2016 flimkien ma' pjanti annessi (fol 473 sa 497) kif ukoll **Mandat ta' Inibizzjoni Nru 157/18 fl-ismijiet Ashok Rattehalli vs Bluestone Investments Malta Limited u Vitals Global Healthcare Limited**, datat 29 ta' Jannar 2018, illi fih ukoll:
  - a. ftehim bejn Rattehalli u s-soċjeta' Bluestone Investments Malta Ltd datat 12 ta' Mejju 2015 relatat mat-tender illi kien ħareġ il-Gvern għall-Isptarijiet, fuq imsemmi u hlasijiet illi kellhom isiru lil Rattehalli. (fol 500 – 513)
  - b. Memorandum of Understanding (fol 515) datat 23 ta' Novembru 2014 bejn Dr Ambrish Gupta għan-nom ta' Medical Associates of Northern Virginia Inc u grupp ta' investituri indikati bhala AGMC Incorporated ta' Dr Ashok Rattehalli, Portpool Investments Limited ta' Ram Tumuluri, u Bluestone Special Situation 4 Limited ta' Mark Pawley, li fih kien hemm ftehim dwar kreazzjoni ta' kumpannija u spartizzjoni ta' spejjeż u profitti f'proġett.
19. Semgħet ix-xhieda ta' **Dr Claudette Fenech**, bhala rappreżentant tal-Malta Business Registry, fis-26 ta' Novembru 2019, fejn ippreżentat id-dokumentazzjoni kollha fil-pussess ta' l-istess Malta Business Registry, in konnessjoni mas-soċjeta' Steward Malta Assets Limited (C 70625) registrata fit-18 ta' Mejju 2015 (Vol III - fol 538), s-soċjeta' Steward Malta Management Limited (C 70624), registrata fit-18 ta' Mejju 2015 (Vol III - fol 583) u s-soċjeta' Steward Malta Ltd, registrata fit-13 ta' Mejju 2015. (Vol III - fol 635)
20. Semgħet ix-xhieda ta' **Dr Peter Fenech**, konsulent legali ta' Dr Ashok Rattehalli, mogħtija fis-26 ta' Novembru 2019.
21. Semgħet ix-xhieda ta' **Dr Konrad Mizzi**, Ministru tat-Turiżmu, mogħtija fis-26 ta' Novembru 2019.
22. Semgħet ix-xhieda ta' **Dr Martin Balzan**, President tal-Medical Association of Malta, mogħtija fis-26 ta' Novembru 2019 u rat id-dokumentazzjoni minnu eżebita.
23. Rat illi fit-28 ta' Novembru 2019, ir-rikorrent talab li jiġi eżebit mill-intimati l-Evaluation Report imsemmi minn Dr Konrad Mizzi fix-xhieda tiegħu, għal liema rapport oġġezzjonaw l-intimati Prim Ministru u Avukat Ġenerali.

24. Rat illi fid-9 ta' Diċembru 2019, il-Qorti laqgħet it-talba u ordnat illi jiġi eżebit sas-seduta li jmiss.
25. Rat illi fis-seduta tal-11 ta' Diċembru 2019, il-konsulenti legali tal-Avukat Ġenerali u l-Prim Ministru għarrfu illi huma ma kellhomx kopja tal-Evaluation Report, liema kopja kienet għand Projects Malta, u għalhekk il-Qorti ordnat illi jittella' bħala xhud rappreżentant ta' Projects Malta.
26. Semgħet x-xhieda ta' **James Camenzuli**, Executive Chairman tal-Projects Malta Limited u Chairman tal-*Evaluation and Adjudication Committee* inkarigat jevalwa l-offerta illi kienet saret mis-soċjeta' Vitals, mogħtija fis-27 ta' Jannar 2020, u rat id-dokument minnu eżebit, ossija **Evaluation Report** li, minħabba fin-natura tiegħu, ġie ordnat illi jkun aċċessibbli biss għall-partijiet u mhux għall-pubbliku.
27. Semgħet ix-xhieda ulterjuri ta' James Camenzuli mogħtija fit-3 ta' Lulju 2020.
28. Semgħet ix-xhieda ta' **Manwel Castagna**, membru tal-*Evaluation and Adjudication Committee* inkarigat jevalwa l-offerta illi kienet saret mis-soċjeta' Vitals, mogħtija fit-3 ta' Lulju 2020.
29. Semgħet ix-xhieda ta' l-Awditur Ġenerali **Charles Deguara**, mogħtija fit-23 ta' Settembru 2020, fejn eżebixxa r-rapport redatt mill-Uffiċċju tiegħu msejjaħ '*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 sa 1042) kif ukoll dokument ieħor imsejjaħ '*Addendum*' (fol 1043 sa 1053), preżentati f' Lulju tas-sena 2020.
30. Semgħet ix-xhieda ulterjuri ta' Manwel Castagna, mogħtija fit-23 ta' Settembru 2020 u rat ir-Request for Proposals ippubblikat mill-Gvern ta' Malta fis-27 ta' Marzu 2015 u intitolat "*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. Semgħet ix-xhieda ta' **Robert Borg**, Membru tal-*Evaluation and Adjudication Committee* inkarigat jevalwa l-offerta illi kienet saret mis-soċjeta' Vitals, mogħtija fit-23 ta' Settembru 2020.
32. Semgħet ix-xhieda ta' **Mario Cutajar**, Segretarju Permanenti Principali tal-Gvern, mogħtija fit-18 ta' Novembru 2020 u rat il-**Memorandum of Understanding iffirmit fl-10 ta' Ottubru 2014**, bejn grupp ta' investituri w il-Gvern ta' Malta, minnu ppreżentat. (fol 1158)
33. Semgħet ix-xhieda ta' **William Wait**, li kien għal żmien Direttur fis-soċjeta' Projects Malta Limited, mogħtija fit-18 ta' Novembru 2020.
34. Semgħet ix-xhieda ta' **Alfred Camilleri**, Segretarju Permanenti fi hdan il-Ministeru tal-Finanzi, mogħtija fit-18 ta' Novembru 2020, u rat id-dokumentazzjoni minnu ppreżentata.
35. Semgħet ix-xhieda tal-**Professor Edward Scicluna**, Ministru tal-Finanzi, mogħtija fid-9 ta' Diċembru 2020.

36. Semgħet ix-xhieda ta' **Adrian Said**, li għamel żmien Executive Chairman ta' Projects Malta Limited, mogħtija fid-9 ta' Diċembru 2020.
37. Semgħet ix-xhieda ta' **Dr Joseph Muscat**, Prim Ministru ta' Malta bejn is-sena 2013 u is-sena 2020, mogħtija fit-18 ta' Jannar 2021.
38. Semgħet ix-xhieda ta' **Ronald Mizzi**, Segretarju Permanenti fil-Ministeru tat-Turizmu, u, fi żmien l-iffirmar tal-kuntratti meritu tal-kawża odjerna, Segretarju Permanenti fi hndan il-Ministeru tal-Energija, Saħħa u Proġetti, mogħtija fit-8 ta' Frar 2021, u rat id-dokumentazzjoni minnu eżebiti, ossija Ftehim datat 27 ta' Awissu 2019 bejn il-Gvern, is-soċjetajiet Steward u l-Bank of Valletta plc.
39. Semgħet ix-xhieda ulterjuri ta' Dr Konrad Mizzi, mogħtija fit-8 ta' Frar 2021.
40. Rat illi fl-24 ta' Frar 2021, **Ronald Mizzi**, in ottemperanza ma' dak lilu mitlub fis-seduta tat-8 ta' Frar 2021, ippreżenta s-segweni dokumentazzjoni in konnessjoni mal-kuntratt odjern: (Vol VI fol 1528 sa Vol VIII fol 2076)

#### **A. Side Letter to Transaction Agreements entered into on the 19th May 2016**

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

#### **B. Health Services Delivery Agreement dated 30th November 2015**

- a. Addendum to Health Services Delivery Agreement dated 7th December 2015
- b. Addendum to Health Services Delivery Agreement dated 7th December 2015
- c. Addendum to Health Services Delivery Agreement dated 30th June 2017

**C. Emphyteutical Deed**

**D. Labour Supply Agreement dated 8th January 2016**

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

**E. Services Concession Agreement dated 30th 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 30th June 2017
- c. Side Letter to the Services Concession Agreement entered into 14th February 2017
- d. Side Letter to the Services Concession Agreement entered into 23rd June 2017

**F. Parent Company Guarantee dated 19th 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 17th July 2019 between Steward Malta Management Ltd and BOV and the Government of Malta - Amendment and Restatement Agreement
- c. Agreement dated 17th July 2019 between the Government of Malta and Steward Malta Management Limited, Steward Malta Assets Ltd, Steward Malta Ltd and BOV
- d. Agreement dated 22nd June 2018 between Steward Malta Management Ltd and BOV and Government of Malta - Security of Title Transfer Agreement
- e. Agreement dated 22nd 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 13th 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 13th November 2018 between Steward Malta Management Ltd and BOV and the Government of Malta - Amendment and Restatement Agreement

41. Semgħet ix-xhieda ta' **Dr Chris Fearne**, Ministru tas-Saħħa, mogħtija fl-1 ta' Marzu 2021.

42. Semgħet ix-xhieda ta' **Marthese Debono**, rappreżentanta tal-Awtorita' tal-Ippjanar, mogħtija fit-12 ta' April 2021 u fis-16 ta' Ġunju 2021, u rat id-dokumentazzjoni minnha eżebita.

43. Rat illi fis-6 ta' Ġunju 2021, ir-rikorrent ddikjara illi ma kellux aktar provi x'jippreżenta.
44. Rat l-affidavit ta' l-**Ingeener James Grima**, Director of Facilities Management fi ħdan l-Isptar Ġenerali t'Għawdex, l-Isptar Saint Luke's u l-Isptar Karin Grech, ippreżentat fl-24 ta' Settembru 2021, u rat id-dokument minnu ppreżentat, ossija photo report ta' xogħolijiet li saru mis-sena 2016 sas-sena 2021.
45. Rat illi fis-16 ta' Novembru 2021, ir-rikorrent talab illi flok l-isem Vitals Global Healthcare Assets Limited, ikun hemm l-isem ta' Steward Malta Assets Limited, flok l-isem Vitals Global Healthcare Ltd ikun hemm l-isem Steward Malta Ltd u flok is-soċjeta' Vitals Global Healthcare Management Ltd ikun hemm l-isem Steward Malta Management Ltd, liema talba giet milqugħa dakinhar stess u korrezzjonijiet ordnati.
46. Rat illi t-tlett soċjetajiet Steward, fis-16 ta' Novembru 2021, iddikjaraw illi ma kellhomx aktar provi x'jippreżentaw.
47. Rat illi r-rikorrent, fis-16 ta' Novembru 2021, talab illi l-Qorti tiġi a konjizzjoni ta' dikjarazzjoni magħmula pubblikament mis-soċjeta' Steward f'proċeduri b'Rikors Nru 93/2021 RGM fl-ismijiet '**Steward Malta Ltd, Steward Malta Assets Ltd u Steward Malta Management Ltd vs Medical Associates of Northern Virginia Inc Profit Sharing Plan**', ippreżentat fit-3 ta' Frar 2021, liema talba ma gietx opposta mill-istess soċjeta' Steward.
48. Rat illi fis-16 ta' Novembru 2021, il-Qorti awtorizzat lir-rikorrent jippreżenta kopja tar-rikors promotur, kif rikjest mir-rikorrent stess.
49. Rat illi fis-17 ta' Novembru 2021, ir-rikorrent ippreżenta kopja tar-rikors promotur fil-kawża 93/2021 RGM.
50. Rat l-affidavit tal-Perit Joseph Attard, bħala Kap Eżekuttiv tal-INDIS Malta Limited, ippreżentat fl-10 ta' Diċembru 2021.
51. Rat illi fl-20 ta' Diċembru 2021, ir-rikorrent ippreżenta kopja tar-Rapport tal-Awditur Ġenerali datat Diċembru 2021, intitolat '**An Audit of Matters Relating to the Concession Awarded to Vitals Global Healthcare by Government - Part 2 - A Review of the Contractual Framework.**'
52. Rat l-affidavit ta' **Robert Vella**, Kap Eżekuttiv tal-Awtorita' tal-Artijiet, ippreżentat fit-23 ta' Diċembru 2021. (fol 2766)
53. Rat l-affidavit ta' **Dr Marisa Grech**, Acting Chief Officer tas-Sezzjoni tal-Kuntratti tal-Aworita' tal-Artijiet, ippreżentat fit-23 ta' Diċembru 2021. (fol 2767)
54. Semgħet ix-xhieda ta' **Mario Grech**, mogħtija fil-15 ta' Marzu 2022, bħala Chairman tal-Malta Industrial Parks Limited, kif kienet imsejġha dak iż-żmien, meta ngħata il-kuntratt meritu tal-kawża odjerna lis-soċjeta' Vitals, u rat id-dokumentazzjoni eżebita mis-soċjeta' INDIS Malta Ltd, ġia Malta Industrial Parks Limited, ossija "**Report on the characteristics of what constitutes an offer of land for an Industrial project under**

*the Disposal of Government Land Act*” redatt minn RSM Malta u datat 21 ta’ Marzu 2016. (fol 2791)

55. Semgħet ix-xhieda ta’ **Peter Mamo**, mogħtija fil-15 ta’ Marzu 2022, bhala Direttur tal-Artijiet fiż-żmien illi ngħata il-kuntratt meritu tal-kawża odjerna, u rat id-dokumentazzjoni minnu eżebiti, ossija r-rikjesti tas-soċjeta intimata INDIS Limited, dak iż-żmien Malta Industrial Parks Limited, sabiex l-artijiet tal-Isptar ta’ Għawdex u dawk ta’ San Luqa u Karin Grech iduru għal fuqhom minghand il-Gvern, liema talbiet saru fis-16 ta’ Marzu 2015 u s-6 ta’ April 2015.
56. Semgħet ix-xhieda in kontro eżami ta’ William Wait illi saret fil-15 ta’ Marzu 2022.
57. Semgħet ix-xhieda in kontro eżami ta’ Adrian Said illi saret fil-15 ta’ Marzu 2022.
58. Semgħet ix-xhieda in kontro eżami ta’ James Camenzuli illi saret fil-15 ta’ Marzu 2022.
59. Semgħet ix-xhieda in kontro eżami ta’ Robert Borg illi saret fil-15 ta’ Marzu 2022.
60. Semgħet ix-xhieda in kontro eżami ta’ Dr Adrian Delia illi saret fil-15 ta’ Marzu 2022.
61. Rat illi s-soċjeta’ INDIS Limited, fil-15 ta’ Marzu 2022, ddikjarat illi ma kellhiex aktar provi x’tippreżenta.
62. Rat illi l-Awtorita’ tal-Artijiet, fil-15 ta’ Marzu 2022, ddikjarat illi ma kellhiex aktar provi x’tippreżenta.
63. Rat in-nota bid-dokumenti eżebiti mill-Onorevoli Prim Ministru u l-Avukat Ġenerali, illi kienu s-segwenti:
  1. Dokument AG1 - Kopja tal-Att Dwar it-Trasferiment Ta’ Artijiet tal-Gvern (Kapitolu 268 tal-Liġijiet ta’ Malta) li ġie mħassar kif spjegat fl-artikolu 84 tal-Att Nru XVII tal- 2017;
  2. Dokument AG2 — Kopja tal-Ordinanza Dwar il-Kummissarju tal-Artijiet (Kapitolu 169 tal-Liġijiet ta’ Malta) li ġiet imħassra kif spjegat fl-artikolu 84 tal-Att Nru XVII tal- 2017;
  3. Dokument AG3 - Kopja tar-Regolamenti ta’ 1-2004 dwar in-Nomina ta’ Awtorità Kompetenti (Ordinanza dwar il-Kummissarju tal-Artijiet) - A.L. 360 ta’ 1-2004;
  4. Dokument AG4 - Kopja tar-Regolamenti ta’ 1-2004 dwar Trasferiment ta’ Jeddijiet u Responsabbiltajiet (Ordinanza dwar il-Kummissarju ta’ 1-Artijiet) - A.L. 361 ta’ 1-2004;
  5. Dokument AG5 - Kopja tal-Ordni tal-2016 li dwar il-Kummissarju tal-Artijiet (Trasferiment ta’ Drittijiet u Responsabbiltajiet) (Ordni Nru. 4) - A.L. 94 tal-2016;
  6. Dokument AG6 - Kopja tal-Ordni tal-2016 li jemenda l-Ordni dwar il-Kummissarju tal-Artijiet (Trasferiment ta’ Drittijiet u Responsabbiltajiet) (Ordni Nru. 4) - A.L. 95 tal-2016;



7. Dokument AG7 - Kopja awtentika ta' att pubbliku fl-atti tan-nutar Dottor Tania Spiteri, li saret referenza ghalih f'paragrafu 2 tal-A.L. 95 tal-2016 li ssostitwixxa paragrafu 4(a) tal-A.L. 94 tal-2015;
  8. Dokument AG8 - Kopja awtentika ta' att pubbliku fl-atti tan-nutar Dottor Tania Spiteri, li saret referenza ghalih f'paragrafu 2 tal-A.L. 95 tal-2016 li ssostitwixxa paragrafu 4(b) tal-A.L. 94 tal-2015;
  9. Dokument AG9 — Notifikazzjoni tal-Gvern Numru 61 tal-2015 u din kif mehuda minn estratt tal-Gazzetta tal-Gvern tat-23 ta' Jannar 2015;
  10. Dokument AG 10 - Notifikazzjoni tal-Gvern Numru 1258 tal-2014 u din kif mehuda minn estratt tal-Gazzetta tal-Gvern tat-12 ta' Diċembru 2014;
  11. Dokument AG11 - Rizultat ta' Ricerki tan-noti tal-insinwa registrati fir-Registru Pubbliku, f'isem il-kumpannija bin-numru ta' Registrazzjoni 'C70625', li originarjament kienet iggib l-isem ta' 'Vitals Global Healthcare Assets Limited' u wara isimha gie mibdul biex jaqra bhala 'Steward Malta Assets Limited'.
64. Rat illi fil-31 ta' Mejju 2022, l-Onorevoli Prim Ministru u l-Avukat Ġenerali iddikjaraw li ma kellhomx aktar provi x'jipprezentaw.
  65. Rat illi fil-31 ta' Mejju 2022, il-partijiet qablu illi l-kawża setgħet tithalla għas-sottomissjonijiet finali bil-miktub.
  66. Rat in-nota ta' sottomissjonijiet bil-miktub tar-rikorrent Dr Adrian Delia pprezentata fid-29 ta' Lulju 2022.
  67. Rat in-nota ta' sottomissjonijiet bil-miktub ta' l-intimat Kap Eżekuttiv tal-Awtorita' tal-Artijiet u c-Chairman tal-Bord tal-Gvernaturi tal-Awtorita' tal-Artijiet, ipprezentati fis-7 ta' Ottubru 2022.
  68. Rat in-nota ta' sottomissjonijiet bil-miktub tal-Onorevoli Prim Ministru u tal-Avukat Ġenerali pprezentati fis-7 ta' Ottubru 2022.
  69. Rat in-nota ta' sottomissjonijiet bil-miktub tas-soċjetajiet konvenuti Steward Malta Assets Ltd, Steward Malta Management Limited u Steward Malta Limited ipprezentati fis-7 ta' Ottubru 2022.
  70. Rat in-nota ta' sottomissjonijiet bil-miktub tas-soċjeta' intimata INDIS Malta Ltd gia Malta Industrial Parks Limited, ipprezentata fis-7 ta' Ottubru 2022.
  71. Semgħet it-trattazzjoni orali tal-abbli difensuri tal-partijiet illi saret fil-25 ta' Ottubru 2022, wara liema trattazzjoni, il-kawża thalliet għas-sentenza.

### **Meritu tal-Kawża**

72. Jirrizulta illi b' kuntratt ta' emfitewsi temporanja tat-22 ta' Marzu 2016, fl-atti tan-Nutar Thomas Vella, bejn minn naħa l-waħda il-Malta Industrial Parks Limited, u l-

Kummissarju tal-Artijiet, in rappreżentanza tal-Gvern ta' Malta, u minn naħa l-oħra Vitals Global Healthcare Assets Limited, ġew trasferiti b'titolu ta' konċessjoni enfitewtika temporanja għal perjodu rinnovabbli ta' tletin (30) sena, numru ta' siti ġewwa Malta u Għawdex, cioè' is-sit tal-Isptar San Luqa, is-sit tal-Isptar Karin Grech, kif ukoll is-sit tal-Isptar Ġenerali t'Għawdex.

73. Jirrizulta illi r-rikorrent jikkontendi illi s-soċjetajiet Vitals Global Healthcare Assets Limited, Vitals Global Healthcare Limited u Vitals Global Healthcare Management Limited, naqsu milli jottemperaw ruħhom mal-obbligi kuntrattwali minnhom assunti.
74. Jirrizulta, għalhekk, illi bħala Membru tal-Kamra tad-Deputati, talab illi l-konċessjoni enfitewtika tiġi mħassra u annullata.
75. Jirrizulta illi l-intimati oġġezzjonaw għal tali talbiet, fejn dawna eċċepew, in suċċint, is-segwenti difiżi:
  - a. Hafna minnhom eċċepew illi ma kienux il-leġittimu kontradittur;
  - b. Ilkoll kemm huma eċċepew illi l-Artikolu 33 tal-Kap 573, li jagħti d-dritt lir-rikorrent bħala Membru tal-Parlament jagħmel tali azzjoni, ma japplikax fil-każ odjern;
  - c. Is-soċjetajiet Vitals eċċepew illi ma kien hemm ebda nuqqas kuntrattwali da' parte tagħhom.
76. Jirrizulta illi fuq medda ta' erbgħa u erbgħin (44) seduta, tressqu ħamsa u għoxrin (25) xhud u ġew ippreżentati dokumentazzjoni varja li wasslet biex il-proċess tal-kawża għandu ftit aktar minn tlett elef pagna (3,000). Ikun opportun, f'dana l-istadju, li ssir riassunt tal-provi prodotti quddiem dina l-Qorti.

## PROVI

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

77. Fl-affidavit tiegħu ppreżentat fis-26 ta' April 2019, Dr Delia stqarr illi fis-27 ta' Marzu 2015, il-Gvern ħareġ **Request for Proposals**, imsejjaħ '*Service Concession for the Redevelopment, Maintenance, Management and Operation of the sites at St. Luke's Hospital, Karin Grech Rehabilitation Hospital and Gozo General Hospital*', fejn kull min kien interessat f'dana il-proġett kellu sad-19 ta' Mejju 2015 sabiex jippreżenta l-offerta tiegħu flimkien ma' '*bid bond*'.
78. Jistqarr illi għalkemm kien hemm tlett kontendenti interessati, madakollu minħabba l-komplessità tal-Konċessjoni u n-natura kemm finanzjarja u kif ukoll l-aspett mediku ta' l-istess Konċessjoni, illi kienet ta' bil-fors tirrikjedi involviment ta' kumpanniji esteri u preparazzjoni estensiva, kienet is-soċjeta' intimata Vitals biss illi eventwalment ippreżentat l-offerta tagħha b' mod komplut.
79. Jirrizulta illi, sussegwentement, ftit ġimgħat wara, f'Ġunju 2015, is-soċjeta' Vitals ġiet magħżula bħala '*chosen bidder*', u eventwalment, fit-22 ta' Marzu 2016 ġiet iffirmata l-Konċessjoni Enfitewtika meritu tal-kawża odjerna.

80. Jirrizulta illi fl-affidavit tiegħu, Dr Delia għamel is-segweni analiżi kronoloġika dwar kif seħħew l-affarijiet qabel ma gie ffirmat il-ftehim:

1. *F'Marzu 2014 il-Ministru Konrad Mizzi inġatar Ministru responsabbli mis-Saħħa, flok il-Ministru Godfrey Farrugia;*
2. *Fid-9 ta' Ottubru 2014 giet registrata s-soċjeta' Pivot Holdings Ltd, b'wieħed mis-sidien ikun ċertu Shaukat Ali Abdul Ghafour (Chaudry) (Passaport Number KG 617268), ċittadin Pakistani li għandu konnessjonijiet kbar u mill-  
viċin mal-Uffiċċju tal-Prim Ministru Malti;*
3. *Illi Pivot Holdings Ltd giet registrata fl-istess indirizz f'Cospicua Road, Paola fejn hemm ukoll registrata Bluestone Investment Malta Ltd, li hija l-parent company tal-VGH;*
4. *Illi Bluestone Investment Malta Ltd minn meta giet inkorporata fl-2014 sa lllum, qatt ma pprezentat audited accounts kif inhi obbligata li tagħmel skond il-Liġi tal-Kumpaniji;*
5. *Illi kemm Pivot Holdings Ltd u Bluestone Investment Malta Ltd huma shareholders f'Crossrange Holdings li fiha hemm Mark Pawley u Walajahi bħala diretturi;*
6. *Is-sidien l-oħra ta' Pivot Holdings Ltd huma Ali Shaukat Asad (b'karta tal-Identita' Maltija u residenti Swieqi) u Walajahi, ċittadin Pakistani.*
7. *Illi Ali Shaukat Asad u Shaukat Ali Abdul Ghafour (Chaudry) għandhom l-istess indirizz ta' residenza fil-Pakistan;*
8. ***Fl-10 ta' Ottubru 2014, gie iffirmit Memorandum of Understanding sigriet bejn din is-soċjeta', fost oħrajn, Mark Pawley, u l-Gvern Malti rappreżentat mill-Ministru Chris Cardona proprju dwar il-privatizzazzjoni tat-tliet sptarijiet pubbliċi hawn fuq imsemmija u konċessjoni emfitewtika li kellha tinghata favur din is-soċjeta' mill-Gvern Malti ftit WARA; (sottolinjar ta' dina l-Qorti)***
9. *Illi fit-23 ta' Novembru 2014 l-investituri Gupta, AGM Inc, Ram Tumuluri (permezz tas-soċjeta' tiegħu registrata fil-British Virgin Islands) u Mark Pawley (permezz ta' Bluestone Investments registrata wkoll fil-British Virgin Islands) iffirmaw Memorandum of Understanding ieħor bejniethom li kien jinkludi fih dettalji speċifiċi ta' dak li kellu jkun (u fil-fatt, kien) fih ir-Request for Proposals li l-Ministru Konrad Mizzi ippubblika f'Marzu 2015;*
10. *Illi fost dettalji oħra, dan il-Memorandum of Understanding ta' bejn dawn l-investituri tat-23 ta' Novembru 2014 kellu referenza għal għan tagħhom li l-*

*VGH kellha tieġu f'idejha t-tmexxija tal-Isptar Ġenerali ta' Għawdex, b'dettalji ta' numru ta' sodod imsemmija (per eż., 210 sodda fl-isptar Ġenerali ta' Għawdex), biex jibnu sptar ta' 200 sodda f' 'G' Mangia, jibnu "a 200 bed assisted living facility" fl-istess binja, jibnu medical college u li jimmiraw biex jieħdu f'idejhom l-isptar San Luqa wkoll. Dan il-MOU sigriet juri li dawn l-investituri kienu ftieħmu li jieħdu f'idejhom Bluestone Investments Ltd.*

- 11. Illi 16-il jum biss wara dan il-Memorandum of Understanding ta' bejn l-investituri, giet reġistrata s-soċjeta' Bluestone Investments Malta Ltd (C 67975), b' Ram Tumuluri u Mark Pawley bħala Diretturi. Is-sid ta' din is-soċjeta' hija Bluestone Special Situation 4 Ltd li hija reġistrata fil-British Virgin Islands. Minn naħa tagħha, terġa' din is-soċjeta' fil-BVI hija proprjeta' ta' Asia Hasimau Investments Ltd li hija wkoll reġistrata fil-British Virgin Islands;*
- 12. Illi Ali Shaukat Asad akkwista 33% tal-ishma f'Pivot Holdings Ltd, f'Marzu 2015, li huwa l-istess xahar meta Projects Malta, taħt id-direzzjoni Ministerjali tal-On Konrad Mizzi, Ministru, ħarġet Request for Proposals (RfP);*
- 13. Illi fi Frar 2015 u ċioe XAHREJN QABEL ma ħareġ ir-Request for Proposals, il-VGH kienet diġa' bdiet tirreklama b'dettalji dak li kellu jkun (u fil-fatt; kien) fih ir-RfP;*
- 14. Illi matul dan il-perjodu is-CEO ta' VGH, l-Amerikan Armin Ernst, ġie impjegat minn Steward Healthcare fl-istess ħin;*
- 15. Illi fl-20 ta' Marzu 2015 il-ġurnalista Daphne Caruana Galizia kitbet, fil-blog tagħha, li l-Gvern Malti kien diġa' (b'mod klandestin) laħaq ftehim ma' Oxley Capital Group biex imexxu l-isptar Ġenerali ta' Għawdex u l-isptar San Luqa u dan QABEL biss kien ħareġ ir-Request for Proposals mill-Ministeru tas-Saħħa. Hija żvelat li f'Jannar 2015 Oxley Capital Group kienu bagħtu lil Ram Tumuluri, fl-uffiċċju ta' Price Water House Coopers f'Malta fejn dan kien għamilha ċara li Oxley Capital Group kellha diġa' ftehim mal-Gvern Malti dwar l-Isptar ta' Għawdex u dak ta' San Luqa;*
- 16. F'Mejju 2015 il-Ministru Konrad Mizzi jikkonferma li kien hemm 3 investituri li ssottomettew bid fir-RfP: Vitalis Global Healthcare u Bluestone Investments (joint offer), Image Hospitals u BSP Investments Ltd. Daphne Caruana Galizia żvelat li Vitalis u Bluestone Investments kellhom l-istess żewġ diretturi :- Ram Tumuluri u s-CEO ta' Oxley Group, Mark Pawley;*
- 17. F'Ġunju 2015 il-Ministru Konrad Mizzi jikkonferma li Vitalis/Bluestone joint offer kienet rebħet il-bid. Jikkonferma li Vitalis (li sa dakinhar kienet saret Vitals) kienet proprjeta' ta' Bluestones Investments, li huwa fund immexxi u amministrat minn Oxley Capital Group;*

18. Illi f'Settembru 2015 il-Gvern Malti, permezz tal-Ministru Konrad Mizzi, ftiehem mal-VGH biex din tibda titħallas:

1. madwar €70 miljun fis-sena (cioe, €2.1 biljun fuq 30 sena);
2. Il-pagi tal-impjegati tat-tliet sptarjiet imsemmija;
3. €1.2 miljun fis-sena għal skola medika f'Għawdex;
4. €1 miljun fis-sena għal servizz ta' air ambulance (li hemm xhieda li raw lil Ram Tumuluri juża kemm-il darba dan il-helicopter biex jivvjagġa bejn Malta u Għawdex);

81. Dr Delia jikkontendi, fl-affidavit tiegħu, illi, f'Novembru 2016, is-soċjeta' Vitals ħatret lil Armin Ernst, li huwa wkoll Chief Administrative Officer ta' Steward Medical Group, bħala CEO tagħha, minn liema posizzjoni huwa rriżenja f'Ottubru 2017, għal raġunijiet personali, u sussegwentement, sar il-President tas-soċjeta' Steward Healthcare Group, li eventwalment akkwistat il-konċessjoni mingħand Vitals hekk kif xtraw l-iżma tal-kumpannija Vitals f'it xhur wara.

82. Dwar il-meritu tal-każ odjern, Dr Delia jgħid li fil-ftehim is-soċjeta' intimat Vitals kellha:

1. Tlesti skola medika ġdida għal Barts f'Għawdex sal-1 ta' Lulju 2017. Dan ma sarx. Lanqas biss inbeda, aħseb u ara kemm tlesta;
2. 50 sodda addizzjonali fl-isptar Karen Grech u San Luqa sal-1 ta' Jannar 2017. Dan ma sarx. Lanqas biss inbeda, aħseb u ara kemm tlesta;
3. 80 sodda ġodda għar-rehabilitation f' San Luqa sat-30 ta' Settembru 2017. Dan ma sarx. Lanqas biss inbeda, aħseb u ara kemm tlesta;

83. Dwar tali obbligi imposti fuq is-soċjeta' Vitals, huwa jkompli jikkontendi illi:

57. Illi ai termini ta' klawzola 15.1 tas-Services Concession Agreement, li jifforma parti integrali tal-konċessjoni emfitewtika temporanja u r-raġuni għaliex giet mogħtija din il-konċessjoni emfitewtika temporanja, skond klawzola 4.3 tal-istess kuntratt hawn imsemmi, l-intimati Vitals Global Healthcare Limited u Vitals Global Healthcare Management Limited, kellhom id-dritt li jassenjaw l-obbligi tagħhom wara l-perjodu ta' tliet (3) snin mid-data ta' tlestija ossia mid-data meta ċertifikat ta' tlestija li jikkonferma li l-concession milestones intlaħqu, u li x-xogħol tlesta, u dawn iż-żewġ kumpanniji hawn imsemmija bħala konċessjonarji ma setgħux jittrasferixxu, jassenjaw, jew b'xi mod ieħor jiddisponu mill-iżma u/jew mill-iżma tas-sussidjarji tagħhom.

58. Illi minn dawn il-ftehim għadhom m'għaddewx it-tliet snin stipulati mill-ligi wisq inqas tlett snin mit-tlestija tal-completion milestones assoċjati mat-tlestija tax-xogħlijiet fuq is-siti kif hawn fuq imsemmija u elenkati, u lanqas

*ma tħallsu l-ebda penalitajiet skont l-Iskeda numru 6 pagna 124 tas-Services Concession Agreement.*

*59. Illi konsegwentement ai termini tal-konċessjoni enfiwewtika temporanja surreferita dan it-trasferiment ta' bejgħ ta' azzjonijiet lil terzi u/jew trasferiment ta' proprjeta' ma jistax jiġi awwtorizzat għax ma ntlahqux il-completion milestones għat-tlestija tax-xogħlijiet fuq is-siti ai termini tal-ftehim raġġunt bil-konċessjoni enfiwewtika temporanja u s-Services Concession Agreement iffirnat bejn l-intimati.*

84. Dwar il-posizzjoni tal-intimati l-oħra interpellati fil-kawża odjerna, apparti Vitals, Dr Delia jikkontendi s-segwent:

*60. Illi l-Kap Eżekuttiv tal-Awwtorita' tal-Artijiet u l-Avukat Ġenerali ma jistax japprova dan it-trasferiment ta' art lil terzi ai termini tal-Artikolu 4.7 tal-konċessjoni enfiwewtika ġialadarba l-obbligi tal-enfiwewta ma ġewx adempiti ai termini tal-istess kuntratt.*

*61. Illi fi kwalunkwe każ il-Kap Eżekuttiv tal-Awwtorita' tal-Artijiet u l-Avukat Ġenerali jridu jassiguraw illi d-dettami tal-konċessjoni enfiwewtika temporanja u l-kundizzjonijiet hemm stipulati jiġu hekk adempiti kif stipulati fl-istess kuntratt ta' konċessjoni enfiwewtika li tagħmel referenza għal dan is-Service Concession Agreement u l-Health Services Delivery Agreement u huwa parti integrali mill-istess konċessjoni enfiwewtika temporanja.*

...

*69. Illi għalhekk ġialadarba l-Kamra tad-Deputati approvat il-ftehim fit-termini ta' kif ġie miftiehem oriġinarjament, ma setgħu qatt l-intimati japprovaw it-trasferiment tal-azzjonijiet lil Steward Healthcare ġialadarba dawn il-milestones kif stabbiliti u kif inhuma hawn fuq riferiti ma ġewx milħuqa u attwati mill-istess Vitals Global Healthcare Assets Limited.*

*70. Illi fiċ-ċirkostanzi l-Awwtorita' tal-Artijiet u l-Bord tal-Gvernaturi tal-Awwtorita' tal-Artijiet għan-nom tal-Gvern ta' Malta kif rappreżentat mill-Prim' Ministru ta' Malta kellhom l-obbligu biex ma japprovawx dan it-trasferiment mhux biss qabel il-Kamra tad-Deputati tagħti l-kunsens tagħha għall bdil tal-kundizzjonijiet approvati minnha qabel ma r-Related Instruments tpoġġew fuq il-Mejda tal-Kamra 8 tad-Deputati fid-19 ta' Ottubru 2016 imma kellhom l-obbligu biex jassiguraw li dak kollu li kellu jsir ai termini tal-milestones mifthema fir-Related Instruments mhux biss ma' Vitals Global Healthcare Assets Limited imma wkoll ma' Vitals Global Healthcare Limited u Vitals Global Healthcare Management Limited jiġu attwati.*

*71. Illi ġialadarba dawn il-milestones ma ġewx attwati ai termini tal-istess kuntratt ta' enfiwewsi temporanja u r-Related Instruments li jiffurmaw parti integrali mill-konċessjoni temporanja tat-22 ta' Marzu 2016 fl-atti tan-Nutar Dottor Thomas Vella, din l-Onorabbli Qorti għandha tħassar u tannulla din it-tali konċessjoni enfiwewtika temporanja għax dak li kellu jsir ma sarx, sa*

*llum huwa baħħ għall-poplu Malti u għalhekk ma jistax proprjeta' pubblika tibqa' tiġi ġestita fil-baħħ b'dannu u spiża imħallsa għal xejn b'xejn lill-azzjonisti tal-istess Vitals Global Healthcare Assets Limited, Vitals Global Healthcare Limited u Vitals Global Healthcare Management Limited biex jiġi assigurat li hwejjeġ il-poplu jiġu amministrati kif imiss bħala bonus pater familias fl-interess tal-kollektivita' u mhux b' mod li huwa ta' dannu għall-istess poplu.*

85. Finalment, dwar ir-raġuni għall-azzjoni tiegħu, Dr Delia jistqarr illi:

*72. Illi jiena bħala deputat tal-poplu ħassejtni fl-obbligu li mmexxi din il-kawża fl-interess tal-poplu u ta' dak kollu li ġie miftiehem għan-nom tal-poplu fejn min kien obligat biex imexxi u jittutela l-proprjeta' pubblika bħall-Onorevoli Prim' Ministru, l-Avukat Ġenerali u l-Awtorita' tal-Artijiet u l-Bord tal-Gvernaturi tal-istess Awtorita' tal-Artijiet baqgħu sajmin minn azzjoni effettiva u fruttifera biex jassiguraw illi l-milestones mifthemma jiġu raġġunti qabel ma jittrasferixxu l-azzjonijiet lil terzi b'dannu għall-istess poplu fi ħlasijiet ta' miljuni kbar li tħallsu inutilment lilhom.*

*73. Illi għal din ir-raġuni jiena ħassejtni fid-dover li nintavola din il-kawża kif għandi d-dritt u l-obbligu li nagħmel ai termini tal-Kap. 573 tal-Liġijiet ta' Malta li tawtorizza lir-rappreżentanti tal-poplu eletti biex jassiguraw, fost affarijiet oħra, li l-proprjeta' pubblika tiġi amministrata u ġestita skond id-dettami tal-kuntratti li l-Awtorita' tal-Artijiet u l-Bord tal-Gvernaturi tal-Awtorita' tal-Artijiet jkun dahlu fuqhom għan-nom tal-Gvern ta' Malta kif rappreżentat mill-Onorevoli Prim' Ministru u f'dan il-każ ukoll mill-Malta Industrial Parks Limited biex b'hekk dak li ġie approvat mill-Kamra tad-Deputati, l-oġħla istituzzjoni fil-pajjiż, tiġi attwata u mhux abbużata kontra l-istess riżoluzzjonijiet li jagħtu awtorita' lil kull Ministru u/jew awtorita' rappreżentanti l-Gvern ta' Malta li jaġixxu fil-parametri ta' dak li ġie approvat mill-istess Kamra tad-Deputati u mhux oltre dak li ġie miftiehem u/jew kontra ta' dak li ġie approvat.*

*74. Illi għalhekk it-trasferiment tal-azzjonijiet lil Steward Healthcare ma setax isir għax il-concession milestones li Vitals Global Healthcare Assets Limited ftehm u li jagħmlu entro tlett snin mill-ftehim raġġunt mal-Gvern Malti ma ntlahqux u ma sarux ħlief ħofra fl-iSptar Craig ta' Għawdex, u dan b'abbuż tal-proprjeta' pubblika lilhom mogħtija.*

*75. Illi għaldaqstant jiena qed nitlob li dan il-kuntratt jiħassar, il-proprjeta' tirriverti lill-Awtorita' tal-Artijiet u lill-Bord tal-Gvernaturi tal-Awtorita' tal-Artijiet ġialadarba Vitals Global Healthcare Assets Limited ma onorawx l-obbligi tagħhom sal-ġurnata ta' llum minkejja li kienu intrabtu li jagħmlu dan ai termini tal-liġi.*

*76. Illi kieku hu minnu illi jiena bħala rappreżentant tal-poplu m'għandix dritt u obbligu biex inġib din l-azzjoni għat-tutela tal-proprjeta' pubblika ai*

*termini tal-Kap. 573 tal-Liġijiet ta' Malta jfisser illi l-kontraenti jistgħu jabbużaw mill-poteri mogħtija lilhom mill-Kamra tad-Deputati mingħajr skrutinju tul il-kors tal-eżekuzzjoni tal-istess kuntratti.*

*77. Illi aħna ġejna eletti biex nassiguraw illi l-proprjeta' pubblika ma tiġix abbużata, tiġi amministrata tajjeb skond il-liġi u skond it-termini tal-ftehim raġġunt bl-approvazzjoni tal-Kamra tad-Deputati. Jekk dan ma jsirx jien nkun nqast mid-dover tiegħi li nassigura li ngib lura għall-poplu Malti dak li ġie meħud u/jew amministrat hażin mhux fl-interess tal-kollektivita' imma ta' xi nteressi settorjali li jmorru kontra l-interess tal-poplu.*

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

86. Fix-xhieda tiegħu, is-Sur Gauci Cunningham, bħala editur tal-gazzetta Illum, stqarr illi minn informazzjoni lilu mgħoddija, irriżultalu illi tagħmir mediku mixtri minn fondi tal-Unjoni Ewropeja ġew mgħoddija lis-soċjeta' Vitals, u dan minkejja illi tali soċjeta' kienet responsabbli għall-operazzjoni tal-Isptarijiet.
87. Stqarr illi kienet tassew stramba kif il-Gvern kien qiegħed jixtri apparat għall-Isptar ta' Għawdex meta dana l-Isptar attwalment ingħata b'konċessjoni privata, lis-soċjeta' Vitals.

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

88. Is-Sur Ray Grillo, bħala rappreżentant tal-Iskrivan tal-Kamra tad-Deputati, ippreżenta lill-Qorti kopji tal-kuntratti ffirmati mill-Gvern u s-soċjeta' Vitals u li ġew imqiegħda fil-Kamra tad-Deputati, liema kuntratti iżda, kif stqarr huwa stess, kienu ġew imqiegħda fil-Kamra tal-Deputati b'varji partijiet minnu mneħħija.
89. Jirriżulta, minn qari ta' tali dokumentazzjoni, illi varji partijiet ta' natura kummerċjali iżda ta' rilevanza konsiderevoli, kemm għal dak illi kienet obligata tagħmel is-soċjeta' Vitals, kif ukoll għall-proċeduri odjerni, ma humiex inklużi fil-kuntratti eżebiti fil-Kamra tad-Deputati

## **IV. Mandat ta' Inibizzjoni 157/2018 fl-ismijiet "Ratthalli Ashok vs Bluestone Investments Malta Limited et" datat 29 ta' Jannar 2018 (Vol II – fol 498 sa 533)**

90. Jirriżulta illi fid-29 ta' Jannar 2018, ġie ppreżentat Mandat ta' Inibizzjoni minn Ashok Ratthalli, li huwa tabib li jirrappreżenta grupp ta' investituri bl-isem ta' AGMC Inkorporata, kontra s-soċjetà Maltija Bluestone Investments Malta Limited u s-soċjetà intimata Vitals Global Healthcare Ltd, li kien wiegħed mill-investituri li kien ftehem ma-Gvern ta' Malta bil-moħbi ta' kullhadd permezz ta' Memorandum of Understanding tal-10 ta' Ottubru 2014.
91. Jirriżulta illi, fil-Mandat ta' Inibizzjoni, Ratthalli kien qiegħed jikkontendi s-segwent:



*Billi r-rikorrent kien wiehed mill-promuturi tal-bidu ta' grupp ta' persuni/entitajiet li minn lat tekniku, amministrattiv u finanzjarju, flimkien hejjew offerta għall-immaniġġjar u tmexxija ta' numru tal-sptarijiet fil-gżejjer Maltin, kif jidher mill-Memorandum of Understanding iffirmat bejn dan il-grupp fit-tlieta u għoxrin (23) ta' Novembru elfejn u erbatax (2014), kopja ta' liema hija annessa u mmarkata Dok C u l-Understanding and Promissory Note iffirmat mill-grupp fis-sebgha (7) ta' Jannar elfejn u ħmistax (2015), kopja ta' liema hija annessa u mmarkata Dok D;*

*Billi d-diskussjonijiet dwar il-formulazzjoni tal-offerta ġew konkluzi bejn dan il-grupp, li wasal sabiex ihejji offerta, liema offerta tmexxiet minn uħud minn dan il-grupp taħt kumpannija li kienet giet imwaqqfa appozitamentt ossia l-kumpannija intimata Bluestone Investments Ltd (C 67975);*

***Billi din is-sejha għall-offerti għall-immaniġġjar ta' bosta sptarijiet f'Malta u Ghawdex, senjatament l-iSptar San Luqa, l-iSptar Karin Grech u l-iSptar Ġenerali ta' Ghawdex, intrebhet minn dan il-grupp ta' persuni/entitajiet; (sottolinjar tal-Qorti)***

*Billi hekk kif intrebhet u nġhatat il-konċessjoni kif jirriżulta mid-dokument anness u mmarkat Dok B u kif miftiehem, giet iffurmata kumpannija bl-isem Vitals Global Healthcare Ltd, liema kumpannija kienet riferita bħala NewCo fil-ftehim fuq imsemmi mmarkat Dok A, bin-numru ta' registrazzjoni C 70546 u bl-indirizz reġistrat numru tnejn u erbgħin (42), Ta' Xbiex Seafront, Ta' Xbiex, sabiex tmexxi l-immaniġġjar tal-isptarijiet u tattwa l-proġett konċess;*

*Billi l-kumpannija intimata hija l-unika isħmatarja tal-kumpannija Vitals Global Healthcare Ltd u għalhekk tikkontrollaha b'mod assolut;*

*Billi r-rikorrent kien daħal fil-ftehim fuq imsemmi mmarkat Dok A mal-kumpannija intimata sabiex iservi bħala membru tal-Bord Mediku kif ukoll tal-Operating Management Team ta' dan il-proġett, jekk tintrebaħ il-konċessjoni, hekk kif jidher mill-klawsola tnejn punt wiehed (2.1) tal-istess ftehim;*

*Billi in forza tal-istess ftehim, senjatament klawsola tlieta punt wiehed (3.1), ir-rikorrent kellu wkoll jingħata (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 the entry into, and execution of the Concession Agreement).*

*Billi l-kumpannija Vitals Global Healthcare Limited daħlet f' 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 fit-tletin (30) ta' Novembru elfejn u ħmistax (2015);*

*Billi l-kumpannija intimata baqgħet tirrikonoxxi d-drittijiet u pertinenzi tar-rikorrent, li rċieva konferma bil-miktub tal-preparamenti tad-dokumentazzjoni “... in connection with your investmeni in Vitals Global Healthcare” hekk kif jidher mill-kopja ta' email annessa u mmarkata Dok E;*

*Billi minkejja l-obbligi assunti mill-kumpannija intimata in forza tal-ftehim fuq imsemmi u mmarkat Dok A tramite l-klawsoli fuq ċitati, kif ukoll minkejja l-wegħdjet magħmula lilu, ir-rikorrent baqa' ma ngħatax l-offerta għax-xiri u/jew trasferiment tal-ishma fil-kumpannija Vitals Global Healthcare Ltd skont il-klawsola numru tlieta punt wieħed (3.1) tal-ftehim;*

*Billi reċentement ir-rikorrent irċieva informazzjoni li l-kumpannija Vitals Global Healthcare Ltd ser tinbiegħ lil terzi u li għalhekk, id-drittijiet tiegħu ser ikomplu jiġu preġudikati, din id-darba b'mod irrimedjabbli stante li l-kumpannija intimata ma tibqax l-ishmatarja magġoritarja tal-kumpannija Vitals Global Healthcare Ltd u għalhekk ma tkunx tista' tonora l-obbligi assunti minnha in vista tal-ftehim fuq imsemmi u mmarkat Dok A;*

92. Jirrizulta illi fid-dokumentazzjoni eżebita minn Rattehalli fil-Mandat ta' Inibizzjoni, hemm ‘*Memorandum of Understanding*’ iffirmat fit-**23 ta' Novembru 2014**, liema ftehim kien iffirmat bejn Dr Ambrish Gupta għan-nom ta' Medical Associates of Northern Virginia Inc u grupp ta' investituri indikati bħala AGMC Incorporated ta' Dr Ashok Rattehali, Portpool Investments Limited, ta' Ram Tumuluri, u Bluestone Special Situation 4 Limited, ta' Mark Pawley, li fih kien hemm ftehim dwar kreazzjoni ta' kumpannija u spartizzjoni ta' spejjeż u profitti f'proġett, li kien is-segwenti:

- **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 Brats and the London School of Medicine and Dentistry.*
- **Potential acquisition of St. Philips and or St. Luke's hospital in Malta**

93. Jirrizulta illi bħala Finanzjar, tali ftehim kif jipprovdi dan li ġej:

- *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. Jirrizulta illi tali **Memorandum of Understanding** ġie iffirmit **wara** illi fl-10 ta' Novembru 2014, kien ġie iffirmit Memorandum of Understanding bejn l-istess partijiet mal-Gvern rappreżentat minn Dr Chris Cardona, u li jidher rappurtat fid-dettal fil-para 190 'l quddiem aktar 'l isfel.

95. Jirrizulta illi sussegwentement, fit-12 ta' Mejju 2015, ossija wara lil-ħruġ tar-*Request for Proposals* maħruġa mill-Gvern fis-27 ta' Marzu 2015 u qabel l-għeluq tal-periodu fejn tali proposti setgħu isiru, ossija 19 ta' Mejju 2015, is-soċjeta' Bluestone Investments Malta Limited u Ashok Rattehalli daħħlu fi ftehim fejn ippremettew dan li ġej:

*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. Jirrizulta illi fil-ftehim, issir referenza għas-soċjeta' Vitals Global Healthcare Ltd bħala il-kumpannija illi ser tiġi fformata, u jintuzaw is-segweni definizzjonijiet li huma ta' rilevanza għall-każ odjern:

*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 in 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 'Karen 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. Jirrizulta illi l-istess ftehim, jagħmel referenza għall-ftehim magħmula fil-passat bejn il-partijiet u jipprovdi dan li ġej:

*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. Jirrizulta illi, sussegwentement, dana il-Mandat ta' Inibizzjoni gie irtirat, kif ikkonfermat minn Dr Peter Fenech, fix-xhieda tiegħu mogħtija fis-26 ta' Novembru 2019, wara ftehim milhuq bejn il-partijiet li wassal għat-trasferiment tal-ishma u eventwali involviment tal-kumpannija minn Steward.

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

99. Dr Mizzi, fix-xhieda tiegħu mogħtija fis-26 ta' Novembru 2019, dakinhar illi sussegwentement irriżenja mill-kariga ta' Ministru minn jeddu, huwa stqarr illi, fis-sena 2014, huwa ġie maħtur bhala Ministru tal-Energija, Saħħa u Proġetti u għal Projects Malta, posizzjoni illi huwa żamm sa madwar is-sena 2016, fejn sar Ministru tat-Turiżmu filwaqt illi żamm ir-responsabbilta' għal Projects Malta, li kienet tiegħu ħsieb il-Public Private Partnerships.
100. Stqarr illi filwaqt illi l-Ministeru minnu mmexxi, ossija dak tal-Energija, Saħħa u Proġetti, kien responsabbli għal dak kollu li kellu x'jaqsam mal-qasam tas-Saħħa, Projects Malta kienet responsabbli mill-aspett kummerċjali.
101. Saħaq illi, fil-każ tal-Vitals, Projects Malta kellha mandat tal-Kabinett sabiex tmexxi n-negozjati tal-Private Public Partnership illi kien ser jintlaħaq fuq il-privatizzazzjoni tal-Isptarijiet.
102. Għarraf illi Projects Malta kienet responsabbli biex tappunta n-*negotiating* u *evaluation teams* in konnessjoni mal-kuntratt u appuntat varji esperti minn diversi oqsma.
103. Stqarr illi l-Gvern tal-ġurnata xtaq jattira Medical School ta' fama internazzjonali u jitfah *'teaching hospital'* ġewwa Għawdex. Di fatti, Malta Enterprise kienet daħlet f'diskussjonijiet ma' varji investituri u saħansitra, fil-bidu ta' Jannar 2015, għamlet preżentazzjoni lill-Ministeru minnu mmexxi. Madanakollu, Dr Mizzi stqarr illi huwa xtaq illi ssir modernizzazzjoni tal-Isptarijiet ta' San Luqa u Karin Grech, kif ukoll dak ta' Għawdex, u għalhekk ma kienx sodisfatt b'dan suggerit mill-Malta Enterprise peress illi kien kbir wisq għal Għawdex u huwa ried li anke l-isptarijiet ta' Malta jibbenefikaw. Kien għalhekk illi Malta Enterprise intalbet sabiex tagħmel 'Concept Paper' differenti, li din id-darba kien jinkludi t-tlett isptarijiet.
104. Mitlub jgħid dwar kemm dam il-proċess tal-għoti tal-kuntratt wara il-ħruġ tar-Request for Proposals (RfP), huwa stqarr illi l-proċess kien in linea mal-proċessi kif regolat mill-Unjoni Ewropeja, iżda ma kienx jaf eżatt kemm dam għaddej, kif ukoll ma kienx f'posizzjoni jgħid jekk dan il-kuntratt kienx l-akbar public private partnership agreement li qatt daħal fih il-Gvern Malti.
105. Dwar ftehim, ossija *Memorandum of Understanding* magħmul mal-Malta Enterprise f'Settembru 2014 minn investituri li eventwalment iffurmaw il-kumpannija Vitals, Dr Mizzi saħaq illi huwa kien jaf illi jeżisti dal-Memorandum of Understanding, iżda ma kienx jaf bil-kontenut tiegħu, għalkemm stqarr illi wara li ġie ffirmat tali ftehim, il-Malta Enterprise kienet għamlet presentation bi proposta għal proġett illi kien in linea ma' dak li jissema' fil-Memorandum.
106. Dwar il-preżentazzjoni illi għamlet il-Malta Enterprise, huwa stqarr illi kien preżenti wkoll Ram Tumuluri jagħmel il-preżentazzjoni, filwaqt illi saħaq illi huwa kien ċar miegħu u ma kull min kien preżenti dakinhar li jekk ma jilhqux ma' dak mitlub mill-Gvern, ma kien ser isir xejn.

107. Stqarr illi ma' Ram Tumuluri huwa qatt ma għarrfu l-kontenut tar-Request for Proposals minn qabel.
108. Dwar id-*due diligence* tas-soċjeta' Vitals, Dr Mizzi stqarr illi kien hemm team ta' Financial, Medical u Operational professionals illi kellhom jagħmlu l-evalwazzjonijiet tagħhom, u huwa personalment qatt ma daħal fiha, peress illi halla f'idejn persuni nvoluti fil-procurement, negożjati u governanza sabiex jieħdu ħsieb.
109. Mistoqsi dwar *due diligence report* ippubblikat fuq is-sit ta' Daphne Caruana Galizia u l-allegazzjonijiet hemm magħmula illi s-soċjeta' Vitals ma kinetx kumpannija affidabbli, huwa saħaq illi l-Gvern ħa ħsieb illi qabbad bord li għamel il-verifiki u *due diligence reports* tiegħu u dak hemm irrappurtat, sa fejn jaf hu, ma huwiex minnu.
110. Dwar is-soċjeta' Vitals, huwa insista illi ma kinetx "*a sham company*", kif kien lilu indikat fid-domandi li kienu qed isirulu, iżda kien ċert li, għalkemm kellha l-problemi tagħha, fis-snin li ġejjin, kien ser ikun hemm suċċess kbir.
111. Dwar ix-xogħol li kellha tagħmel il-Vitals, huwa stqarr illi fl-Isptar ta' Għawdex, kien hemm diffikultajiet, għax il-ħsieb kien li x-xogħolijiet setgħu jsiru permezz ta' Development Notification Order, iżda sussegwentement, wara ħafna opposizzjoni li kien hemm, kellu jsir applikazzjoni sħiħa tal-Planning Authority, liema applikazzjoni ħadet iż-żmien tagħha u għalhekk il-proġett dam biex sar.
112. Dwar l-esperjenza illi kella s-soċjeta' Vitals, Dr Mizzi saħaq illi huwa mexxa fuq il-pariri ta' esperti minnu mqabba, filwaqt illi stqarr li l-istess soċjeta' Vitals ippreżentat ruħha bħala kumpannija li kellha partners b'esperjenza medika b'saħħitha.
113. Fix-xhieda ulterjuri tiegħu mogħtija fit-8 ta' Frar 2021 (Vol VI - fol 1472 sa 1525), filwaqt illi, din id-darba, irrifjuta li jirrispondi għal domandi lilu magħmula peress illi saħaq li kien hemm inkjesta magisterjali dwar il-kuntratt meritu tal-kawża odjerna, għażel illi jaqra' Statement minnu preparata, li kienet tgħid is-segwenti:

*F'Jannar tal-2015, bħala Ministru responsabbli għas-saħħa u flimkien mas-Segretarju Parlamentari għas-Saħħa dak iż-żmien, attendejna laqgħa organizzata mill-uffiċċju tal-Prim Ministru u minn Malta Enterprise dwar proposta minn investituri li kienu f'kuntatt mal-Malta Enterprise fil-kuntest tal-faċilita' medika li kienet meħtieġa għal Bart's Medical School.*

*L-attenzenza għal din il-preżentazzjoni kienet l-ewwel involviment mill-Ministeru tiegħi. Din il-proposta kienet dwar l-isptar ta' Għawdex ... Ġenerali ta' Għawdex iżda mill-ewwel ħassejna li ma kenitx taqbel mal-viżjoni aktar wiesa' tal-Gvern.*

*Dan qed jingħad fil-kuntest tal-istat ħażin ta' bosta faċilitajiet mediċi li konna writtna fl-2013. Il-Prim' Ministru ta' dak iż-żmien tagħni direzzjoni li l-isptar*

*ta' Ghawdex jiġi żviluppat mill-ġdid, li tinbena' l-faċilita' għal Bart's u li jinstab investiment ġdid fis-Saħħa u fit-Turizmu tas-Saħħa permezz ta' proċess kompetittiv.*

*Sirt naf li preċedentement il-Gvern kien iffirma MoU ma' dawn l-investituri u dan il-Memorandum of Understanding sa dan it-tant emm ... kien skada. Il-Ministeru li kont immexxi jien ma kellu ebda involviment f'dak il-proċess. Qatt. Ninsab infurmat li l-Malta Enterprise avżat lill-investituri li l-proposta tagħhom ma kenitx taqbel mal-ħsibijiet tal-Gvern.*

*Sa dan it-tant il-Gvern qies il-bżonnijiet fil-qasam tas-saħħa u l-proġett ma baqax jitqies bħala proġett ta' investiment dirett kif solitament jitmexxa minn Malta Enterprise, iżda bħala konċessjoni pubblika li kienet se tinkludi faċilitajiet u servizzi addizzjonali.*

*Filwaqt li dak iż-żmien il-konċessjonijiet ma kinux jaqgħu taħt ir-regolamenti tax-Xiri Pubbliku, il-Gvern xorta ried li jkun hemm kompetizzjoni u sejha pubblika. F'Marzu tal-2015 il-Gvern dak iż-żmien iddeċieda li johroġ sejha għal proposti ... RfP għal konċessjoni li kienet tinkludi l-iżvilupp tal-faċilitajiet mediċi f'Malta u f'Ghawdex wkoll. Kif ukoll għadda regolamenti li taw id-dritt ta' appell mid-deċiżjoni eventwali tal-għażla ta' dak il-proġett.*

*Il-proġett tħabbar pubblikament mill-Prim Ministru u dak iż-żmien kien milqugħ pożittivament mill-pajjiż, inkluż l-Opposizzjoni Nazzjonalista. Meta tħabbar, jiena u s-Segretarju Parlamentari spjegajna l-proċess li kien qed jitmexxa u l-RfP... Request for Proposals ġie publikat fis-27 ta' Marzu 2015.*

*Għal din is-sejha kien hemm tlett offerti. Wara, seħħ il-proċess pubbliku tal-għażla u ġie rakkomandat li l-offerut ... emm ... ġie rakkomandat l-offerent preferut mill-Bord tal-Għażla, liema rakkomandazzjoni ġiet approvata mill-Kabinett tal-Ministri. Il-proċess ta' negozjati tkompla taħt id-direzzjoni tal-istrutturi fis-Servizz Pubbliku.*

*Irrid ngħid illi l-Kabinett tal-Ministri kien approva l-proġett u kien jiġi regolarment aġġornat fid-dettalji bl-iżviluppi, bl-eżitu tan-negozjati u bix-xogħol li kien għaddej fuq il-proġett matul ix-xhur u s-snin, kemm fi żmien il-VGH u wara bl-involviment ta' Steward.*

*Tajjeb ngħid li l-Kabinett ta mill-inqas erbgħa ... ta mill-anqas erbatax il-approvazzjoni ... approvals ... fourteen (14) approvals għal fażijiet u aspetti tal-proċess kollu, wara li kienu tressqu l-aġġornamenti relattivi u wara diskussjoni sħiħa. Dan appart minn briefings illi kienu jsiru regolarment, iġifieri appart mill-fourteen (14) approvals, il-Kabinett kien jiġi updated regolarment ukoll.*

*Filwaqt li dawn il-materji tal-Kabinett huma wkoll privileġġjati nista' nikkonferma li kien hemm il-partecipazzjoni u l-approvazzjoni minn sħabi l-Ministri preżenti.*

*Grazzi.*

114. Saħaq illi da parte tiegħu ma kien hemm ebda wrong doing assoluta u la darba kienet infetħet inkjesta maġisterjali, ried jipproteġi d-drittijiet tiegħu billi ma jirrispondix aktar. Għalhekk, tul is-seduta kollha, huwa għażel illi ma jixhidx sabiex ma jinkriminax ruħu.

## **VI. Dr Martin Balzan (Vol III –fol 745 sa 755)**

115. Dr Martin Balzan, fix-xhieda tiegħu tas-26 ta' Novembru 2019, bħala **President tal-Medical Association of Malta** involut fit-tmexxija tagħha sa mis-sena 2001, saħaq illi għalkemm it-tobba ġew imwiegħda illi kien ser isir investment ta' mitejn miljun għal Sptar ġdid ġewwa Għawdex, kif ukoll għar-rinnovament ta' l-Isptar San Luqa u Karin Grech, u dan kollu għas-servizz tal-pazjenti, sa issa ma kien sar assolutament xejn, għajr għall-ftuħ tal-iskola Barts Medical School, li hija entita privata u ma tagħti ebda servizz lill-pubbliku, u xi xogħolijiet żgħar oħra.
116. Stqarr ukoll illi, minn dokumentazzjoni pubblika f'idejn l-Assoċjazzjoni u ippubblikata fil-Budget tal-Gvern, jirriżulta illi fejn fis-sena 2015, in-nefqa tal-Gvern fil-Isptar kien ta' madwar ħamsa u tletin (35) miljun Euro, fis-sena 2020, in-nefqa kienet issa ser titla' għal madwar disgħin (90) miljun Euro. Saħaq ukoll illi lis-soċjeta' Vitals, il-Gvern kien qiegħed iħallasha s-somma ta' madwar ħamsin (50) miljun fis-sena.
117. Saħaq illi kien qed jidher ċar illi, filwaqt li l-Gvern kien qiegħed iħallas il-parti tiegħu, is-soċjeta' Vitals, li kienu, fil-private public partnership, dik il-parti li kellha toħroġ il-flus għall-investimenti, kienet għadha ma ħarġet assolutament xejn.
118. Insista illi fit-tlett sptarijiet fuq imsemmija, ossija San Luqa, Karin Grech u Għawdex, ma sarx ix-xogħol da parte tas-soċjeta' Vitals li kienet obligat ruħha li tagħmel fi żmien pre-stabbilit.
119. Dr Balzan għamel referenza għall-estimi ppubblikati mil-Gvern fil-Budget, fejn irriżulta illi, lis-soċjeta' Vitals, bejn is-snin 2016 u 2020 tħallsulha s-segwent pagamenti:

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



120. Huwa għarraf ukoll illi tali somom ma jinkludux il-flejjes illi l-Gvern ħallas f' salarji, f' operation tal-isptarijiet u rehab, li bejn is-snin 2016 sa 2020 kienu s-segwenti:

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

121. Dr Balzan insista illi, għal dawk l-ħlasijiet kollha illi qed isiru mill-Gvern lis-soċjeta' Vitals, is-soċjeta' Vitals sa dakinhar kienet għadha ma għamlet ebda investment serju fit-tlett sptarijiet, u dan għalkemm kienet obligata illi tagħmlu fi żmien ben stipulat.
122. Huwa stqarr li t-tħassib tal-Assoċjazzjoni kienet tali illi kellha ta' bilfors ssemma lehinha pubblikament u anke tixhed quddiem dina l-Qorti, fil-proċeduri odjerni.

## VII. James Camenzuli (Vol IV –fol 777 sa 786)

123. Is-Sur James Camenzuli, bħala *Executive Chairman* ta' Projects Malta Limited meta kien qed jiġi diskuss il-proġett, fix-xhieda tiegħu tas-27 ta' Jannar 2020, filwaqt illi eżebixxa kopja tal-**Procurement Evaluation Report** imsemmi minn Dr Konrad Mizzi u datat 19 ta' Ġunju 2015, stqarr illi fiż-żmien meta Projects Malta giet involuta fil-proġett tal-Isptarijiet, l-Executive Chairperson kien Mr William Wait, filwaqt illi huwa kellu l-kariga ta' CEO tal-**Foundation for Medical Services**.
124. Is-Sur Camezuli stqarr illi xi xahrejn qabel ma rredigew l-Evaluation Report, il-Foundation for Medical Services kienet mitluba minn Projects Malta sabiex tevalwa l-proposti illi kienu rċevew wara li kien gie ppubblikat ir-Request for Proposals għal *Service Concession for the Redevelopment, Maintenance, Managament and Operation of the sites at St. Luke's Hospital, Karin Grech Rehabilitation Hospital and Gozo General Hospital* fis-27 ta' Marzu 2015.
125. Stqarr illi l-**Evaluation and Adjudication Committee** kien jikkonsisti minnu stess, bħala Chairman, flimkien ma' żewġt Membri oħra, ossija Mr Robert Borg, u Mr Manuel Castagna.
126. Il-Qorti tqis illi, tenut kont tal-importanza nazzjonali illi tali proġett kellu w ir-riperkussjonijiet fuq iċ-ċittadini illi tali kuntratt kellu, jkun opportun illi partijiet tal-Evaluation Report jiġu kkwotati sabiex ikunu ta' dominju pubbliku, kif mistħoqq, u dana minkejja l-oġġezzjonijiet espressi mill-intimati Prim Ministru u Avukat Ġenerali fil-mument illi dawna ġew ippreżentati lill-Qorti.
127. Jirriżulta illi l-eġħluq tal-offerti kien id-19 ta' Mejju 2015, u sa dakinhar, kienu ġew ippreżentati tlett offerti, ossija mingħand:

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

128. Kif stabbilit fir-rapport,

*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. Jirrizulta illi, filwaqt li l-Proposta tal-Vitals Global Healthcare Limited kellha 'bid bond' magħha ta' nofs miljun Euro, l-proposti taż-żewġ offerenti l-oħra ma kellhomx bid bond, u għalhekk baqgħet tiġi kkunsidrata biss l-offerta tal-Vitals.

130. Jirrizulta illi Mr Charles Grixti tqabbd sabiex jagħmel il-konkluzjonijiet tiegħu dwar l-evalwazzjoni teknika filwaqt illi Robert Borg u Manuel Castagna, membri tal-Bord stess, tqabbd sabiex jagħmlu l-evalwazzjonijiet finanzjarji tagħha.

131. Jirrizulta illi, fl-evalwazzjoni teknika tagħhom, il-Bord wasal għas-segweni konkluzjonijiet: (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 an 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. Jirrizulta illi fejn jirrigwarda l-aspett kwalitattiv tal-proposta, l-Kumitat innota s-segwenti:

*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. Il-Kumitat, madanakollu, hass illi, dwar l-proposta finanzjarja kif redatta, kellu jirriveva s-segwenti:

*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. Jigifieri, il-Kumitat kien già osserva illi jekk jfalli l-kuncett ta' 'medical tourism', il-proġett kollu kif propost kien ser ifalli.

135. Dwar l-infiq illi pproponiet illi ser tagħmel il-Vitals, il-Kumitat qal is-segwenti:

*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. Finalment, tenut kont tal-konsiderazzjonijiet kollha li saru, abbażi tar-rapport Tekniku ta' Mr Grixti u r-Rapport Finanzjarju u ta' Robert Borg u Max Castagna, il-Kumitat ikkonkluda illi:

*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 Camezuli sqarr illi, hekk kif lestew ir-rapport tagħhom fid-19 ta' Ġunju 2015, huma għaddewh lil Projects Malta, illi dawna aċċettawh kif inhu u pprocedew bil-kuntratti.
138. Fix-xhieda ulterjuri tiegħu mogħtija fit-3 ta' Lulju 2020 (Vol III –fol 796 sa 834), James Camenzuli sqarr illi ma kienx għadu involut fil-Projects Malta, u għalhekk ma kienx f'posizzjoni illi jipprezenta dokumentazzjoni ulterjuri.
139. Sqarr ukoll illi d-Due Diligence tal-bidder ma kienx fir-remit tal-Kumitat ta' Evalwazzjoni, u għalhekk ebda Due Diligence ma saret tas-soċjeta' Vitals. Insista li fir-Request for Proposal ma saret ebda referenza għal Due Diligence, u għalhekk dina qatt ma giex evalwata u/jew ikkunsidrata mill-Evaluation Committee.
140. Sqarr, madanakollu, illi s-soċjeta' Vitals ipprezentat ħafna dokumentazzjoni bankarji li kienu fid-dettall biex juru illi kien hemm '*financial backing*' għal proġett tal-Vitals, fejn kien jidher ċar illi kien hemm committment fejn il-Bank of India kienu jiffinanzjaw parti ingenti mill-proġett filwaqt illi finanzi oħra kienu ser isiru mill-Oxley Group, illi taħta s-soċjeta' Vitals kienet taqa'. Il-Kumitat, madanakollu, qatt ma għamel verifiki ma' tali finanzjaturi dwar il-veraċita' ta' dak dikjarat mis-soċjeta' Vitals, u striegħu biss fuq id-dokumentazzjoni.
141. Insista illi, meta għamlu l-evaluation, il-kwistjoni ta' garanzija bankarja illi kellu jagħti sussegwentement il-Gvern Malti fl-ammont ta' tlett mija u sittin miljun ma kien jissemma xejn.
142. Huwa saħaq illi ma kellhom ebda rikjesta sabiex jinvestigaw u jevalwaw il-persuni u kumpanniji involuti fil-proposta, w kellhom biss jistriegħu fuq id-dokumentazzjoni lilhom pprovduta, illi skond il-Kumitat kienet waħda estensiva u suffiċjenti.
143. Sqarr illi ma kellu ebda indikazzjoni li Ram Tumuluri kien dikjarat fallut għewwa l-Canada fis-sena 2012 u dan wara illi kellu negozju ta' ċentri tal-massages, u dana sar jafu ferm wara, permezz tal-gazzetti lokali, wara li ġia ingħata il-kuntratt.
144. Saħaq illi l-Kumitat ġie kkreat mill-Projects Malta u msejjaħ Evaluation and Adjudication Committee minnhom stess, iżda xogħolhom kien biss illi jevalwaw id-

dokumentazzjoni lilhom mgħoddija, filwaqt li nsista li d-deċiżjoni finali ttieħdet minn Projects Malta, u mhux minnhom, għalkemm l-isem tal-Kumitat kien jindika mod ieħor.

145. Mistoqsi dwar jekk tħassbux dwar il-fatt illi, għalkemm il-bid ddaħħlet fid-19 ta' Mejju 2015, ossija sitt ijiem wara li giet iffurmata il-kumpanija Vitals Global Healthcare Limited, stqarr illi peress li kien hemm consortium, ma kien fiha xejn x'tiħasseb dwarha.
146. In kontro eżami mogħtija fil-15 ta' Marzu 2022 (Vol XI –fol 2819 sa 2824), huwa kkonferma li kien iċ-Chairman tal-Evaluation and Evaluation Committee li rrediġa l-Evaluation Report li abbażi tiegħu ntlahaq il-ftehim finali.

#### **VIII. Manuel Castagna (Vol IV –fol 835 sa 882)**

147. Fix-xhieda tiegħu mogħtija fit-3 ta' Lulju 2020, Manuel Castagna stqarr illi huwa Awditur, partner tad-ditta ta' awdituri Nexia BT, u kien ġie appuntat fuq l-Evaluation and Adjudicating Committee minn Projects Malta.
148. Huwa stqarr illi minkejja kien jidher li s-soċjeta' Vitals kellha biss €1,200 bħala shared capital, huwa ma kellu ebda problema b'tali fatt, minkejja illi kellu jsir investment ta' madwar mija u sebġa u tmenin miljun Euro, u dana peress illi saħaq li mid-dokumentazzjoni kien jidher illi kellhom finanzjar għal kollox, u dana permezz ta' "*letters of comfort*" – il-kumitat kien ħass illi tali "*letters of comfort*" kellhom jitqiesu bħala suffiċjenti, minkejja li minn natura tagħhom, "*letters of comfort*" ma humiex "*committment*" dirett tal-Bank, iżda unikament indikazzjoni li lesti jagħtu tali "*committment*".
149. Saħaq illi, skond l-RfP maħruġ minn Projects Malta, ma kienx hemm obbligu fuq il-bidder sabiex jipprovdi assikurazzjoni bankarji aktar affidabbli w il-"*letters of comfort*" kienu suffiċjenti.
150. Insista illi, għalkemm l-Kumitat kien għamel l-konklużjonijiet tiegħu, kemm Projects Malta kif ukoll il-Gvern ta' Malta kellhom kull dritt illi jbiddu t-termini tal-ftehim finali, għax il-Gvern kellu dritt illi jinnegozja kif ried, u għalhekk ċaħad bil-qawwa li, b'xi mod, il-Kumitat wassal lill-Gvern sabiex jiftiehem ma' Vitals.
151. Stqarr illi ebda referenza ma qatt saret li l-Gvern kien ser ikollu jagħmel garanzija ta' tlett mija u sittin Miljun Euro, kif kien qed jingħad li fatti seħħ ftit xhur wara li ġie ffirmat il-kuntratt.
152. Castagna qal illi waħda mill-aktar affarijiet importanti li rrizulta kien illi l-proġett kien vijabbli bil-proġett ta' "*medical tourism*" li kien qiegħed jiġi ppjanat mis-soċjeta' Vitals.
153. Huwa kkonferma wkoll li ma saret ebda *Due Diligence* fuq il-kumpanija jew il-persuni illi kienu jiffurmaw tali kumpaniji, bħal Ram Tumuluri.

154. Sahaq illi, qabel ma l-Gvern daħal fi ftehim mas-soċjeta' Vitals, kellu jsir *Due Diligence* kemm finanzjarju kif ukoll legali, iżda insista illi dina ma kinetx fir-remit illi kellu l-Kumitat li kien fih, u kienet haġa li kellu jagħmel il-Gvern, mhux huma.
155. Dwar l-offerta ta' Vitals, stqarr illi dik kienet l-unika waħda li setgħet tiġi kkunsidrata, peress illi ż-żewġ bidders ma kinux għamlu l-garanziji neċessarji mal-applikazzjoni tagħhom, u għalhekk lanqas setgħu jiġu kkunsidrati.
156. Mistoqsi jekk l-Kumitat kellux is-serħan tal-moħħ li l-proġett kien ser jitmexxa mis-soċjeta' Vitals, huwa saħaq li l-bid kien juri li s-soċjeta' Vitals, flimkien ma' esperti oħra, kienu ser imexxu l-proġett.
157. Ikkonferma illi fl-evalwazzjoni tagħhom, huma straħu biss fuq id-dokumentazzjoni prodotta, u ma għamlux sħarriġ ulterjuri u fid-dettall dwar l-isptarijiet u proġetti oħra illi kienet involuta fihom Vitals – dana ma kienx inkluż fir-remit tagħhom minn Projects Malta.
158. Insista illi huwa kellu s-serħan li, “*fi kwalunkwe stadju, jekk dak li kien miftiehem ma nżammx, il-Gvern seta' mhux biss jiġbed il-performance guarantee (ta' disgħa miljun Euro), imma anke jħassar il-kuntratt kollu anke wara li jkun beda*” (fol 877). Žied jgħid illi “*jekk kien hemm xi haġa illi marret hażin, min kien qed jimmonitorja iva ... kellu jieħu azzjonijiet*”.
159. Fix-xhieda ulterjuri tiegħu mogħtija fit-23 ta' Settembru 2020 (Vol V –fol 1054 sa 1081), Manuel Castagna ippreżenta ir-**Request for Proposals** (RfP) illi kien gie publikat mill-Gvern fis-27 ta' Marzu 2015 (Vol V - fol 1082 sa 1102) filwaqt illi stqarr illi ma kellu ebda dokumentazzjoni oħra, stante illi dawna kienu fil-pussess ta' Projects Malta.
160. Huwa kkonferma illi ma kellhom ebda vizjoni ta' xi Memorandum of Understanding illi seta' sar precedentement, li dwaru huwa ma kien jaf xejn.
161. Sahaq illi, bħala parti mill-mansjonijiet tal-Kumitat, dwar ‘*General Financial Standing and Sounding of the Bidder*’, kif imsemmi fl-RfP, “*letters of comfort*” da' parte ta' investituri setgħu jitqiesu suffiċjenti f'dak il-mument u ‘*sanction letters*’ da' parte tal-investituri ma kinux meħtieġa, filwaqt illi insista illi huwa mexa abbażi tad-direzzjoni mogħtija fl-RfP.
162. Insista illi, fil-mument illi kienu qed jevalwaw l-offerta tas-soċjeta' Vitals, l-offerta kif deskritta kienet waħda kredibbli u fattibbli, u kienet abbinata ma' assikurazzjonijiet finanzjarji li kienu jidhru kredibbli.
163. Stqarr, madanakollu, illi dwar x'gara wara illi huma għamlu r-rapport tagħhom, huwa ma jafx, u għalhekk ma setax jifhem x'wassal għall-proġett fl-istat illi huwa llum.

164. Dwar *Due Diligence*, rinfaċċjat bil-konklużjonijiet tal-Awditur Ġenerali, huwa insista li l-mandat tal-Kumitat ma kienx illi jagħmlu *Due Diligence*, peress illi dana ma kienx imsemmi fl-RfP. Insista illi *Due Diligence* kellha ssir fi stadju aktar avanzat, u dana peress illi xogħol il-kumitat kien unikament sabiex jevalwa r-rapport u jressaq preferred bidder mal-Gvern, liema Gvern imbagħad kellu jagħmel il-verifiki u n-negozjati tiegħu qabel ma jiffinalizza.

#### IX. L-Awditur Ġenerali Charles Deguara (Vol IV –fol 924 sa 932)

165. Fix-xhieda tiegħu mogħtija fit-23 ta' Settembru 2020, l-Awditur Ġenerali Charles Deguara għarraf il-Qorti illi fil-21 ta' Novembru 2016, l-Union Haddiema Magħqudin flimkien mal-Medical Association of Malta kienu talbu lil Public Accounts Committee sabiex jiġi investigat l-għoti tal-kuntratt lil Vitals, meritu tal-kawża odjerna, u għalhekk l-Uffiċċju tal-Awditur Ġenerali minnu mmexxija ipproċeda biex jinvestiga l-ilment.

166. Fis-7 ta' Lulju 2020, huwa ppreżenta l-ewwel minn tlett rapporti ppjanati, ossija rapport intitolat '*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 sa 1042)

167. Ftit wara il-pubblikazzjoni tar-rapport, in vista ta' konklużjonijiet minnu magħmula fejn stqarr li kien hemm dokumentazzjoni li qiegħda tinżamm lura minnu, l-Uffiċċju tal-Prim Ministru għaddielu *Memorandum of Understanding* datat 10 ta' Ottubru 2014 li, sa meta gie ppubblikat l-ewwel rapport tiegħu, kien għadu ma ngħatax lill-Awditur Ġenerali, minkejja li kien minnu mitlub wara li issemmilu l-eżistenza ta' tali ftehim. Bħala riżultat ta' dan, huwa pproċeda biex ippubblika rapport ieħor, imsejjaħ *Addendum*. (Vol IV –fol 1043 sa 1053)

168. Jirriżulta illi, fl-ewwel rapport tiegħu, ipprezentat fis-7 ta' Lulju 2020, l-Awditur Ġenerali jagħmel studju dettaljat u fir-reqqa tal-proċedura kollha illi eventwalment wasslet għall-għotja tal-kuntratt lis-soċjeta' Vitals.

169. F'rapport ta' mhux anqas minn mitejn u għoxrin (220) paġna<sup>1</sup>, mhux possibbilment riduċibbli fil-kawża odjerna, iżda faċilment aċċessibbli fuq is-sit ufficijali tal-Uffiċċju tal-Awditur Ġenerali<sup>2</sup>, l-Awditur Ġenerali jagħmel eżami fir-reqqa tal-proċess kronologiku kollu, minn Marzu 2013 sas-27 ta' Ottubru 2015, data meta l-Kabinett awtorizza lill-Ministru tas-Saħħa ta' dak iż-żmien sabiex jiffirma l-ftehim finali mas-soċjeta' Vitals, u jasal għall-konklużjoni illi kien hemm ħafna kwistjonijiet illi huwa seta' josserva fil-proċess kollu illi kienu jqajjmulu tħassib serju dwar il-korrettezza tal-proċedura kollha adoperata u li wasslet għall-kuntratt finali mogħti lis-soċjeta' Vitals.

<sup>1</sup> <https://nao.gov.mt/loadfile/a8c1d387-3a0d-4eac-ad91-7781cf87ebda>

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



170. Fost il-ħafna osservazzjonijiet u konkluzjonijiet illi saru mill-Avukat Ġenerali fl-Ewwel rapport tiegħu, ikun opportun illi jiġu riprodotti partijiet minnu, b'sottolinjar ta' dina l-Qorti, li juru il-ħsieb tal-Awditur Ġenerali, li dina l-Qorti tagħmel bħala tagħha ukoll:

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. Jirriżulta illi, kif ġia fuq osservat, f'it jiem wara illi ġie ppubblikat tali rapport, id-dokument illi kien inżamm mistur mill-Awditur Ġenerali, ossija il-**Memorandum of Understanding** milhuq mal-Gvern f'Ottubru 2014, ossija qabel ma nbeda l-proċess kollu li wassal għall-kuntratt meritu tal-kawża odjerna, ingħadda lill-Awditur Ġenerali mill-Uffiċċju tal-Prim Ministru, u abbażi ta' tali dokument, l-Awditur Ġenerali ipproċeda biex jagħmel **Rapport Addizzjonali** bil-konkluzjonijiet li ġejjin:<sup>3</sup>

<sup>3</sup> <https://nao.gov.mt/loadfile/5356e198-d255-44c0-a7c7-46a6accc64cf>

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. **Dwar il-Memorandum of Understanding**, l-Awditur Ġenerali jagħmel is-segwenti eżami u osservazzjonijiet:

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. Il-Qorti hawnhekk tosserva illi jidher li s-soċjeta' Pivot Holding Limited kienet giet iffurmata **gurnata** qabel dana il-ftehim, ossija 9 ta' Ottubru 2014, indikazzjoni ċara illi n-negozjati kienu ilhom għaddejjin għal żmien qabel.

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. Dwar l-importanza tal-Memorandum of Understanding u r-raġunijiet għaliex kien jidher ċar li tali Memorandum of Understanding kien il-bażi illi wassal għall-ħruġ tar-Request for Proposals u eventwali għoti tal-kuntratt lill-Vitals, l-Avukat Ġenerali jagħmel is-segwentni osservazzjonijiet:

*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. Fir-rapport tiegħu, l-Awditur Ġenerali jikkunsidra wkoll l-gravita' tal-fatt li *Due Diligence* jidher illi ma kienx sar, u jagħmel is-segwenti kummenti:

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 informed the NAO that he was not requested to attend this presentation.

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. L-Awditur Ġenerali, fir-rapport tiegħu, abbazi ta' dak minnu analizzat u deskritt, jikkontendi illi l-proċess kollu tal-ġhoti tal-konċessjoni u kuntratti sussegwenti lis-soċjeta' Vitals kien vizzjat mill-bidu nett, ossija *ab initio*, u in sostenn ta' dan jagħmel is-segwenti osservazzjonijiet:

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 sa 1143)**

177. Fix-xhieda tiegħu mogħtija fit-23 ta' Settembru 2020, Robert Borg sqarr illi huwa Awditur u kien tqabba mis-Segretarju Permanenti tal-Ministeru tal-Energija, Saħħa u Proġetti, Mr Ronald Mizzi, sabiex ikun fuq l-Evaluating and Adjudication Committee, fejn il-funzjoni prinċipali tiegħu kienet illi jidħol fil-*“Financials”* u fil-*“Business Plan”* li pprovdew l-investituri.
178. Il-konklużjonijiet tal-Kumitati sussegwentement kellhom jingħaddew lil Projects Malta Limited.

179. Stqarr illi tul il-proċess kollu tal-evalwazzjoni, Projects Malta, li kienet rappreżentata minn John Valenzia, kienet mgħarrfa b'dak kollu illi kien qiegħed isir, tant illi fl-RfP stess kien hemm indikat li kull minn kellu talbiet għall-kjarifiki seta' jagħmilhom direttament lil John Valenzia.
180. Dwar il-*fitness* u *probity* tal-applikant, ossija is-soċjeta' Vitals, huwa stqarr li fil-proposta li kienet għet minnu evalwata, kien jidher illi kien hemm is-sostenn u involviment ta' Oxley Capital, illi hija investment equity fund stabbilita għewwa Singapore u li tmexxi żewġ fondi, ossija Cambridge International Trust, li għandha assi ta' madwar disgħa biljun Euro (€9,000,000,000) u Blue Stone Investment, li għandha assi ta' madwar ħames biljun Euro (€5,000,000,000).
181. Huwa saħaq li, in vista ta' l-involviment ta' Oxley Capital, kif ukoll ta' Mark Pawley, illi huwa l-Executive Chairman ta' tali fond ta' investment, dan kien juri li kien hemm business plan fattibbli, u għalhekk għalih kien aċċettabbli.
182. Żied jgħid illi l-ħsieb tal-Gvern, dak iż-żmien, kien sabiex jottjeni aktar sodod għall-pazjenti, peress illi l-Isptar Mater Dei ma kienx qed ilaħħaq, u għalhekk ried li l-privat jinvesti fi Sptar bi flusu, fejn il-Gvern jassikurah dħul regolari minn numru ta' sodod mħallsa mill-istess Gvern filwaqt illi l-privat ikun jista' jiggwadanja mill-investment tiegħu mill-iżvilupp ta' 'medical tourism' li huwa kellu jippromwovi.
183. Insista illi l-profitt li kien ser jiggenera l-investitur kien unikament mill-*medical tourism*, u għalhekk dana l-aspett tal-proġett kien essenzjali għas-suċċess tal-investment kif propost mis-soċjeta' Vitals.
184. Saħaq li huwa qatt ma kien jaf l-eżistenza ta' ebda Memorandum of Understanding, u żied jgħid li, kieku kien jaf biha, huwa ma kienx jaċċetta l-inkariku fl-ewwel lok. Stqarr li, "*with the benefit of hindsight*", kieku kien jaf illi kien hemm l-manigġi li seta' kien hemm, huwa qatt ma kien jaċċetta l-brief.
185. Stqarr illi kien imħasseb bil-fatt illi ma kienx hemm bids oħra, għajr għal dik ta' Vitals, li setgħu jikkunsidraw, peress illi ż-żewġ bidders l-oħra ma kinux ipprezentaw garanziji rikjesti u dan anke in vista tal-fatt illi l-proġett kien wieħed konsiderevoli u ta' portata kbira.
186. Madnakollu, huwa qal li, fil-mument illi saret il-proposta, s-soċjeta' Vitals kienet qiegħda tgħid li l-kapital tagħha kien ser jiżdied bl-investment ta' Oxley Capital fl-ammont ta' erbgħin miljun Euro (€40,000,000) u huwa kien jippretendi li kellu jkun mistenni li fil-ftehim finali li sar bejn il-Gvern u Vitals, indikazzjoni ta' dana l-investment kellu jiġi kristallizzat fi ftehim.
187. Stqarr, iżda, illi l-involviment tiegħu u tal-Kumitat kien biss sa l-istadju tal-Evalwazzjoni, u sussegwentement, in-negozjati u ftehim kellu jsir mill-Gvern. Madanakollu, kkonferma illi, kif jidher mill-atti pubbliċi tal-Malta Business Register, ma sar ebda investment ta' kapital minn Oxley Capital, kif fuq spjegat.

188. Fuq domandi li sarulu, saħaq illi kien ċar li l-baži tal-proġett kollu kien l-aspett ta' 'medical tourism', u għalhekk, jekk ma jaħdimx l-aspett ta' 'medical tourism', il-proġett kollu kien ser ifalli.
189. In kontro eżami mogħtija fil-15 ta' Marzu 2022 (Vol XII – fol 2825 sa 2828), saħaq illi l-Awtorita' tal-Artijiet qatt ma giet avviciinata in rigward ta' xi deċiżjonijiet li kienu ser jittieħdu.

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

190. Fix-xhieda tiegħu mogħtija fit-18 ta' Novembru 2020, is-Segretarju Permanenti Prinċipali, Mario Cutajar, eżebixxa kopja tal-**Memorandum of Understanding** (Vol V - fol 1158 sa 1165) iffirmit fl-**10 ta' Ottubru 2014** bejn il-Gvern ta' Malta, rappreżentata minn Dr Chris Cardona bħala Ministru tal-Ekonomija u grupp ta' żviluppaturi u operaturi konsistenti minn Mark Edward Pawley, bħala rappreżentant tas-soċjeta' registrata ġewwa il-British Virgin Islands bl-isem ta' Bluestone Special Situations 4 Limited, Dr Ashok Rattehalli, bħala rappreżentant tas-soċjeta' Awstrijaka AGMC Incorporated u Mr Mohammed Shoaib Walajahi u Mr Chaudhry Shaukat Ali bħala rappreżentanti tas-soċjeta' lokali Pivot Holdings Limited.
191. Mistoqsi jekk kienx hemm xi ftehim oħrajn apparti dan, huwa stqarr illi sa fejn kien jaf, ma kien ebda ftehim ieħor.
192. Jirrizulta li, fil-preambolu ta' tali ftehim, jingħad is-segwenti:

*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 in 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 Project; while the Investor has agreed to put up and/or procure all the other investment necessary to develop the Project.*

193. Jirriżulta illi, skond tali ftehim, li kien validu sa l-aħħar ta' Frar 2015, filwaqt li l-Gvern kien prekluz mill-jagħmel kwalsiasi negozjati in konnessjoni mas-siti identifikati, l-investituri kellhom sal-15 ta' Jannar 2015, sabiex jipprezentaw *“a fully-fledged business plan with all the necessary details to enable the Government to carry out a due diligence and evaluation.”*
194. Jirriżulta wkoll illi tali perjodu kien utilizzat *“to carry out research and gather market intelligence on the needs and scope of the project together with all the relevant Maltese authorities.”*
195. Dwar il-mod kif kien ser jopera l-proġett miftiehem, l-ftehim jipprovdi dan li ġej:

*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. Jidher ċar ukoll illi l-Gvern intrabat li jassisti u jgħin lill-investituri fl-istħarrig tagħhom bil-għan illi jkun jista' jattwa l-proġett finali, tant illi daħal fis-segweni obbligi:

*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 student's 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 of 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. Finalment, il-partijiet qablu li ma jsir xejn bl-izvilupp tal-Isptar Għawdex u l-Medical School sakemm il-ftehim kien viġenti, u dana meta ftehm u illi:

*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 disclosed 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 Fnal Deed this MOU shall not be contrued 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 receving 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 ipos facto revoked and of no validity upon the dispatch by the Government of an electronic mail or fomal 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 sa 1200)

198. Fix-xhieda tiegħu mogħtija fit-18 ta' Novembru 2020, William Wait stqarr illi huwa kien Direttur fi Projects Malta flimkien ma' Alfred Camilleri, li kien anke Segretarju Permanenti fi hdan il-Ministeru tal-Finanzi, filwaqt illi Executive Chairman ta' tali kumpannija kien Adrian Said.
199. Huwa saħaq illi Projects Malta ma kinetx involuta fil-preparazzjoni u hruġ tar-***Request for Proposal*** illi hargħet fis-27 ta' Marzu 2015. Ix-xogħol ta' Projects Malta, kien biss wieħed amministrattiv, ossija illi jamministraw il-proċess li kien ġie mibdi mill-Ministeru għas-Saħħa mal-hruġ tal-RfP.
200. Stqarr illi filwaqt illi l-evalwazzjoni għall-*'preferred bidder'* kellha ssir, u di fatti saret, mill-*Evaluation and Adjudicating Committee* mqabbd mill-Ministru tas-Saħħa, sussegwentement, wara r-rapport tagħhom, kien hemm sussegwentement Operational Committee illi kien responsabbli sabiex jiffinalizza l-kuntratti, liema Kumitat kien immexxi minn David Galea, illi kien konsulent imqabbd għal dan il-għan mill-Ministeru tal-Energija, Saħħa u Proġetti.
201. Insista illi, bħala Projects Malta, ma kellha assolutament ebda involviment fid-deċiżjonijiet u diskussjonijiet, w l-unika involviment tagħha kien dak amministrattiv, ossija biex torganizza laqgħat, skambju ta' dokumentazzjoni u affarijiet simili illi jiġu lilha mitluba sabiex tagħmel.
202. Stqarr illi l-*Operational Committee* qatt ma għadda dokumentazzjoni lil Projects Malta sabiex jingħaddew lill-partijiet oħra, u jippresumi li kollox ingħadda lill-Contracting Authority, ossija il-Ministeru tal-Energija, Saħħa u Proġetti li kien responsabbli għal tali proġett.
203. Stqarr illi David Galea kien il-persuna responsabbli tad-*Drafting and Negotiating Committee* illi eventwalment wassal għal ftehim finali, w Projects Malta ma kellha assolutament ebda involviment fil-proċess minnu mmexxi, għajr illi tħallsu għas-servizzi minnu reži.
204. Huwa għarraf illi, sa fejn kien jaf hu, l-materja tal-proġett ġiet riferuta lill-Kabinett ta' mill-anqas tlett darbiet, fejn darba saret preżentazzjoni tal-evalwazzjoni u darba oħra ġie awtorizzat Dr Mizzi sabiex jiffirma l-ftehim finali – madanakollu, Projects Malta, f'ebda stadju ta' dan ma kienet involuta. Xogħolha kien biss ta' Segretarju.
205. Ikkonferma, in kontro eżami mogħtija fil-15 ta' Marzu 2022, (Vol XII – fol 2813 sa 2816) illi Project Malta ma kienet firmatarja ta' ebda dokumentazzjoni fil-kuntratti, u xogħolha kien unikament wieħed amministrattiv.

206. Ikkonferma wkoll illi John Valenzia kien impjegat ta' Projects Malta li kien qiegħed jamministra l-proċess ta' dana l-RfP u kien għalhekk li ismu jidher fil-'*clarifications*' li kienu qed jinħargu hekk kif isiru domandi minn min kien interessat dwar is-sejha.

### XIII. Alfred Camilleri (Vol V fol 1201 sa 1258)

207. Fix-xhieda tiegħu mogħtija fit-18 ta' Novembru 2020, Alfred Camilleri, Segretarju Permanenti fil-Ministeru tal-Finanzi, saħaq illi la hu, fil-kariga ufficjali tiegħu ta' Segretarju Permanenti għall-Ministeru tal-Finanzi, u lanqas Projects Malta ma kellha ebda involviment fil-proġett kollu li wassal għall-kuntratt mal-Vitals.
208. Saħaq, di fatti, illi l-konċessjoni illi ingħatat lis-soċjeta' Vitals kien proġett tal-Gvern, ossija tal-Ministeru għall-Energija, Saħħa u Proġetti ta' dak iż-żmien, u kien dan il-Ministeru li attwalment kien il-Contracting Authority responsabbli minn dan il-proġett, mill-bidu sa' l-aħħar.
209. Stqarr illi Projects Malta Limited kienet a '*service provider*' għall-Gvern, illi kienet hemm sabiex tiffaċilita' l-proċess tal-Public Private partnerships, iżda f'ebda mod ma kienet tkun involuta fihom.
210. Saħaq illi il-kuntratt mogħti lis-soċjeta' Vitals kienet attwalment "*services concession*" li, fi żmien meta ingħatat, ma kinetx regolata minn ebda regoli, peress illi r-regoli dwar Public Concessions inħarġet madwar sena u nofs wara.
211. **Insista illi fil-kapaċita' tiegħu ta' Segretarju Permanenti fil-Ministeru tal-Finanzi, huwa qatt ma ġie involut b'ebda mod għajr għal meta, fil-5 ta' Diċembru 2014, huwa, bhala rappreżentant tal-Ministeru tal-Finanzi, intalab minn Projects Malta li tingħata l-permess tiġġestixxi l-proġett kollu hi, bhala wiehed mill-proġetti kkontemplati fit-Tielet Skeda tal-Procurement Regulations, liema permess huwa nnega għax insista illi dana kien proġett ta' entita konsiderevoli illi kien jenħtieġ li jitmexxa direttament minn Ministeru u mhux minn kumpannija tal-Gvern.**
212. Stqarr li, mill-informazzjoni illi huwa ottjena, irriżulta illi ir-Request for Proposals ġie redatt minn Ganado Advocates, u dana **qatt ma inghadda lilu u qatt ma ġie kkonsultat fuqu**, peress illi l-*contracting authority*, ossija il-Ministeru tal-Energija, Saħħa u Proġetti, qatt ma involviah fiha.
213. Insista illi Projects Malta Limited ma kienet involuta f'ebda deċiżjoni in konnessjoni ma' dina l-Concession, peress illi d-deċiżjonijiet kollha kienu qed jittieħdu mill-Ministeru tal-Energija, Saħħa u Proġetti u l-Steering Committee li kien qabbad l-istess Ministeru.
214. Di fatti, is-Sur Camilleri saħaq li kien hemm Steering Committee immexxi mill-Ministru tal-Energija, Saħħa u Proġetti ta' dak iż-żmien flimkien mas-Segretarju Permanenti u esperti mqabbda minnu li kienu f'posizzjoni illi jitolbu lill-Evaluation Committee jagħmlu aktar xogħol u analiżi fuq il-proġett – haġa illi jidher illi ma saritx.

215. Huwa jishaq ukoll illi anke il-kabinett kellu jitlob kull kjarifika u/jew jibgħat lura l-proċess tal-evalwazzjoni għal aktar approfondiment, madanakollu ma huwiex edott minn jekk dana qatt sar da parti tal-Kabinett.
216. **Insista li, minhabba l-mod kif kien strutturat il-proċess, li kien sar permess ta' Request for Proposals, il-Ministeru tal-Finanzi u l-uffiċċju tiegħu, ma jkunux involuti f'ebda mod u ma jistghux jinvolvu ruhhom fiha.**
217. Huwa osserva illi kemm kien ilu involut fil-finanzi, għal aktar minn ħmistax-il sena, qatt ma ra istanza fejn Ministeru jingagġa lill-kumpannija bħal Projects Malta sabiex tiġġestixxi proġett tan-natura ta' dik ikkontemplata fl-RfP ippubblikata mill-Ministeru tal-Energija, Saħħa u Proġetti.
218. Stqarr illi l-ewwel darba illi saret preżentazzjoni tal-konċessjoni u l-impatt finanzjarju li dan kien ser ikollu fuq il-finanzi tal-Gvern kien f'Ġunju 2016, ossija wara illi ġew iffirmiti l-ftehim kollha.
219. **Insista wkoll illi huwa qatt ma ġie mgħarraf bl-eżistenza ta' Memorandum of Understanding iffirmit fl-10 ta' Novembru 2014.**
220. Dwar il-proċess tal-Evalwazzjoni u kif sar, huwa stqarr li kif ġie redatt l-RfP, il-Kumitat kellu dritt illi jitlob għal kwalsiasi dokumentazzjoni sabiex jaċċerta ruħu minn kull aspekt tal-proposta, u għalhekk il-Kumitat kellu d-dritt jitlob għal kwalsiasi dokumentazzjoni illi huma setgħu qiesu neċessarji.
221. **Dwar garanziji mogħtija mill-Gvern in konnessjoni ma' dana il-proġett, huwa sahaq illi bhala l-persuna prinċiplament involut fil-hruġ u ffirmar tal-garanziji kollha tal-Gvern, huwa ma huwiex a korrent ta' kwalsiasi garanzija illi setgħet qatt inhargħet mill-Gvern in konnessjoni ma' tali proġett.**
222. Mistoqsi jekk jafx dwar l-eżistenza ta' xi ftehim ta' garanzija ta' mitt miljun, huwa stqarr illi ebda garanzija ma nġiebet quddiemu sabiex tiġi minnu approvata. Madanakollu, stqarr illi huwa a korrent tal-fatt illi ġiet iffirmita dak li tissejjah 'Contingent Liability Agreement', li huwa qatt ma ġie involut fiha u li sar jaf biha biss riżultat ta' rappurtaġġ fuq il-media.
223. Dwar nuqqasijiet tas-soċjeta' Vitals biex jilhqqu l-miri fuqhom imposti, huwa sahaq illi jaqa' fuq il-Contracting Authority, jigifieri il-Ministeru tal-Energija, Saħħa u Proġetti, sabiex jivverifikaw jekk dak imwiegħed kienx qiegħed jiġi milhuq u, jekk le, jieħdu l-azzjonijiet opportuni.
224. **Mistoqsi jekk, tul il-karriera tiegħu fil-Finanzi, qatt rax xi ftehim ta' contingency liability illi tiġi in vigore f'każ li jkun hemm nuqqas imputabbli mhux fuq il-Gvern iżda fuq il-parti l-oħra, huwa sahaq illi huwa qatt ma ra tali tip ta' ftehim isir qabel.**

**XIV. Professur Edward Scicluna (Vol V - fol 1269 sa 1316)**

225. Fix-xhieda tiegħu mogħtija fid-9 ta' Diċembru 2020, il-Professur Edward Scicluna, illi sa ftit jiem qabel ix-xhieda tiegħu kien ikopri l-kariga ta' Ministru tal-Finanzi sa mis-sena 2013, u kien f'din il-kariga meta ġew iffirmati l-ftehim meritu tal-kawża odjerna, **sahaq illi huwa qatt ma kien jaf bl-eżistenza ta' Memorandum of Understanding illi kien ġie ffirmat fl-10 ta' Novembru 2014 u il-Kabinett tal-Gvern qatt ma ġie mgharraf bl-eżistenza ta' tali ftehim.**
226. Stqarr illi fil-budget speech li ta' fis-17 ta' Novembru 2014 għas-sena li kienet ġejja, huwa kien għamilha pubblika illi l-Gvern kellu pjanijiet sabiex jirriabilita l-Isptar ta' San Luqa.
227. Sahaq illi Projects Malta ma kinetx taqa' taħt il-Ministeru tiegħu, iżda kienet taqa' taħt il-Ministeru mmexxi minn Dr Konrad Mizzi, filwaqt illi Malta Enterprise kienet taqa' taħt il-Ministeru tal-Ekonomija, ossija ta' Dr Chris Cardona.
228. Ftakar illi l-proġett kien issemma' fil-Kabinett u dana għar-raġuni illi peress li dana kien proċess abbażi ta' RfP u mhux by Tender, ma kienx hemm proċess ta' appell maħsub, u għalhekk il-Kabinett kien mgharraf li kellhom isiru arrangamenti għal dan – madanakollu, sahaq illi tali informazzjoni ingħatat lilhom **wara** illi d-deċiżjoni kienet ittiehdet.
229. Għarraf illi f'Marzu tas-sena 2016, il-Ministru tal-Energija, Sahħa u Proġetti flimkien ma' nies oħra kienu għamlu presentation dwar il-proġett u kienu tawhom x'jifhmu li l-Gvern ma kienx ser jonfoq aktar milli kien qed jonfoq fil-preżent, għal dak li jirrigwarda l-Isptar ta' St Luke's u dak ta' Ghawdex.
230. Stqarr illi, filwaqt li kien a korrent tal-fatt li kemm is-soċjeta' Vitals, kif ukoll is-soċjeta' Steward li ħadet it-tmexxija mingħandha aktar tard, ma wettqux dak minnhom imwiegħed, il-Gvern kien dejjem qed jagħti aktar żmien lill-istess sabiex jippruvaw jaslu f'soluzzjoni, partikolarment meta ħadet it-tmexxija Steward, li għalhekk kellha tidhol u ssolvi l-varji problemi li nstabu.
231. **Madanakollu, stqarr illi huwa a korrent tal-fatt illi kemm Vitals kif ukoll Steward it-tnejn naqsu milli jaslu mal-obbligi fuqhom imposti u minnhom assunti.**
232. **Osserva illi, bhala Ministeru tal-Finanzi, kien biss f'Marzu tas-sena 2016, wara illi l-ftehim kien iffirmat, li ġew mgharrfa dwar l-implikazzjonijiet finanzjarji li tali ftehim seta' kellu.**
233. Insista wkoll illi Dr Konrad Mizzi, bhala Ministru tal-Energija, Sahħa u Proġetti, baqa' ma għaddhielux kopji tal-kuntratt sa' Lulju 2016 meta, wara li kienu sarulu varji rikjesti, bl-aħħar waħda jiġi mgharraf ukoll il-Prim Ministru, u eventwalment fit-12 ta' Lulju 2016 ingħata kopji tal-ftehim u kuntratti kollha.

234. Mistoqsi dwar jekk jafx bl-eżistenza ta' xi tip ta' ftehim li jsemmi ammont ta' mitt miljun Euro, stqarr illi huwa ma huwa a korrent ta' ebda ftehim ta' dana s-sens. Huwa a korrent, madankollu illi mument minnhom sar xi diskors dwar għaxar miljuni, iżda huwa kien oġġezzjona għal hlas ta' dan it-tip, u dana baqa' ma sarx.
235. Dwar il-Budget speech tiegħu li qara f'Novembru 2014 fejn qal "*Il-Gvern qiegħed ifassal master plan għaż-żona tal-Isptar San Luqa u meta dan il-proġett jitlesta l-Gvern se johroġ sejha għall-interess biex dan s-sit, li l-maggior parti tiegħu thalla mitlub, jiġi żviluppat b'mod li jkun a benefiċċju tal-esigenzi tal-Maltin u Għawdxin fosthom l-oqasma relatati mas-Saħħa*" huwa stqarr li tali informazzjoni giet lillu mgħoddija mill-Ministeru tal-Energija, Saħħa u Proġetti.
236. Fuq il-posizzjoni ta' Steward, huwa stqarr illi kienet giet diskussa fil-Kabinett u kien gie deċiż li Steward setgħu jieħdu l-proġett mingħand il-Vitals. Stqarr li kien a korrent tal-fatt illi jaf li għaddejjin diskussjonijiet biex tinstab soluzzjoni għal sitwazzjoni viġenti, iżda ma kienx jaf l-eżitu tagħhom.

#### **XV. Adrian Said (Vol V - fol 1317 sa 1333)**

237. Fix-xhieda tiegħu mogħtija fid-9 ta' Diċembru 2020, Adrian Said stqarr illi huwa kien Chairman Eżekuttiv ta' Projects Malta Limited bejn Settembru 2014 u Ġunju 2015, kumpannija illi kienet taqa' taħt il-Ministeru illi kellu Dr Konrad Mizzi, ossija il-Ministeru tal-Energija, Saħħa u Proġetti ta' dak iż-żmien.
238. Stqarr illi huwa qatt ma kien jaf bl-eżistenza ta' Memorandum of Understanding iffirmit fl-10 ta' Novembru 2014, u għalih kienet sorpriża meta qara dwarha fuq il-media.
239. Saħaq illi Projects Malta ma kinetx qiegħda tmexxi l-proġett tal-Isptarijiet, tant illi meta daħal hu, sab illi l-RfP kien ġia lest biex jiġi ppubblikat – tali detall hija interessanti stante illi l-Memorandum of Understanding gie iffirmit fl-10 ta' Ottubru 2014, ossija wara li beda fil-kariga tiegħu, u għalhekk tali asserzjoni tfisser illi f'Settembru 2014 l-RfP kien ġia a konoxxenza ta' persuni, possibbilment anke l-investituri stess.
240. Huwa insista li kull min kien involut fil-proġett kien magħżul mill-Ministeru tal-Energija, Saħħa u Proġetti, illi kien il-Contracting Authority.
241. Stqarr illi il-persuna li kien qiegħed imexxi l-proġett kien il-Permanent Secretary fi hdan il-Ministeru tal-Energija, Saħħa u Proġetti, ossija Ronald Mizzi, u Projects Malta Limited kienet biss il-"*facilitator*" biex tassisti, fejn ma involviet ruħha f'xejn għajr illi thallas il-konsulenti kollha li kienu mqabbda.
242. In kontro eżami, mogħtija fil-15 ta' Marzu 2022 (Vol XII – fol 2817 – 2818), ikkonferma mill-ġdid illi l-irwol ta' Projects Malta kien ta' ko-ordinatur bejn il-varji entitajiet u ma kellha ebda involviment fin-negozjati jew trasferimenti li sehħew.

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

243. Fix-xhieda tiegħu mogħtija fit-18 ta' Jannar 2021, Dr Joseph Muscat, Prim Ministru fiż-żmien illi ingħatat il-konċessjoni meritu tal-kawża odjerna, saħaq illi kienet deċiżjoni tiegħu illi l-Isptar San Luqa kif ukoll Karin Grech, u l-Isptar ta' Għawdex jkollhom investment xieraq biex jiġu ripristinati fi stat tajjeb u ċ-ċittadin jingħata servizz aħjar, liema investment, madanakollu, kellu jingiebb mill-privat peress illi l-Gvern ma kellux flus. Kien għalhekk illi huwa kien inkariga lill-entitajiet kkonċernati sabiex jimxu b'sejha pubblika.
244. Saħaq illi dan il-proġett gie diskuss mill-kabinett tmax-il darba, sakemm eventwalment gie approvat mill-Kabinett kollu.
245. Huwa stqarr illi kien gie infurmat li terzi persuni kienu għamlu proposta lil Malta Enterprise dwar investment fi sptarijiet iżda, wara preżentazzjoni li kienet saret lil Dr Konrad Mizzi u Mr Chris Fearn, li dak iż-żmien kienu t-tnejn fil-Ministeru tal-Energija, Saħha u Proġetti, gie mgħarraf illi dak propost ma kienx in linea mal-viżjoni tal-Gvern biex jimmodernizza u jdaħħal l-involviment tal-privat. Għalhekk, huwa kien inkarigahom sabiex johroġ sejha pubblika filwaqt illi, sa fejn kien infurmat, il-Memorandum of Understanding twaqqat'.
246. Huwa insista illi l-fatt li membri tas-soċjeta' Vitals, qabel ma giet iffurmata, kienu daħlu f'Memorandum of Understanding mal-Gvern, ma kellha assolutament ebda relevanza fl-għoti tal-kuntratt finali lil Vitals u ma kien hemm ebda raġuni 'l għaliex Vitals ma kellhiex tiġi kkunsidrata u eventwalment mogħtija l-konċessjoni finali.
247. Huwa saħaq illi ma kienx minnu kif kien qiegħed jingħad li l-Gvern kien qiegħed iħallas €250,000 kuljum lis-soċjeta' Vitals, u dana għax parti sostanzjali mis-somma mħallsa hija attwalment pagabbli f'pagi lit-tobba, nurses u kull min huwa involut fl-Isptar u minn dak li fadal, hemm l-element tal-VAT li, wara li tnaqqas kollox, jirriżulta li s-soċjeta' Vitals qiegħda tithallas €64,000 kuljum.
248. Insista illi, a differenza ta' dak allegat mir-rikorrent, saru ħafna investimenti da' parte tas-soċjeta' Vitals in linea ma dak minnha obligat li tagħmel. Saħaq illi saret l-iskola medika f'Għawdex b'investment ta' ħamsa u tletin miljun Euro, Orthodontic and Prosthetics Unit fl-Isptar Karin Grech ta' madwar żewġ miljun Euro, żieda ma' madwar tmienja u għoxrin sodda fl-Isptar St Lukes, akkwist ta' Air Ambulance ġdida għal Għawdex u żieda ta' sodod f'Għawdex. **Stqarr, madanakollu, illi xorta wahda jqies illi ma sarx biżżejjed.**
249. Insista wkoll illi ma kienx minnu li l-art kienet giet mogħtija lis-soċjeta' Vitals għal disġhin sena, fejn saħaq illi l-propjeta' dejjem baqgħet tal-Gvern u eventwalment tirriverti lura lejn il-Gvern, bl-iżvilupp kollu li jkun sar fihom.
250. Mistoqsi għaliex il-Gvern kien aċċetta illi l-kuntratt jiġi assunt mis-soċjeta' Steward flok Vitals, minkejja n-nuqqasijiet kbar li kien hemm, stqarr illi "*meta faċċjati*

*b' sitwazzjoni fejn għandek kumpannija ewlenija Amerikana internazzjonali li qed tara kif tespandi l-orizzonti tagħha barra l-Istati Uniti u barra ċerti żoni oħra u trid tidhol f'Malta ikun irresponsabbli dak il-Gvern li ma jippermettix li dan isir” (fol 1357).*

251. Saħaq ukoll illi minħabba fil-limitazzjonijiet imposti fuq il-Gvern mill-Unjoni Ewropeja kif ukoll limitazzjonijiet finanzjarji tal-Gvern, l-uniku mod kif seta' jsir investiment serju u effettiv fl-Isptarijiet kien permezz ta' investiment tal-privat, kif kien sar u kien qiegħed isir.
252. Mistoqsi dwar eżistenza ta' kuntratt ta' mitt miljun, **huwa jistqarr li jinsab sorpriż li jissemma' tali somma, peress illi ma huwiex a konoxxenza ta' ebda ftehim f'dan is-sens.** Madanakollu, huwa jinsab a korrent tal-fatt illi hemm ftehim li, f'każ li l-kawża odjerna tiġi deċiża a favur tar-rikorrent u għalhekk il-Gvern jieħu lura l-assi kollha involuti, il-Gvern ikollu jagħmel tajjeb mal-Bank lokali li sellef il-flejjes lis-soċjeta' Vitals sabiex isiru l-investimenti għal dak kollu illi gie misluf. Madnakollu, ma kienx a korrent jekk dak dovut attwalment jammontax għal mitt miljun, kif qed jiġi allegat.
253. Insista illi ma kienx minnu li ma kienx hemm investiment fl-Isptarijiet, peress illi osserva li, fil-każ odjern, dina ma kinetx biss kwistjoni ta' investiment, iżda kienet kwistjoni ta' tmexxija u viżjoni u dina kienet suċċess.
254. Saħaq illi l-proġett kellu problemi mal-Awtorita' tal-Ippjanar kif ukoll mal-Opposizzjoni li, saħansitra, kienet daħlet il-Kummissjoni Ewropeja fil-kwistjoni, liema problemi lkoll tawlu ż-żmien għall-ottjeniment ta' dan mixtieq.
255. Huwa saħaq illi l-iskola medika ġewwa Għawdex ta' Barts kienet kruċjali peress illi ddaħħal l-element ta' sostenibbiltà tal-Isptarijiet, fejn il-Gvern jibda jdaħħal flus mingħajr ma jofroghom.
256. Dwar il-proċess tal-għoti tal-kuntratt, huwa insista illi bl-ebda mod ma huwa intervjuena fil-proċess tal-għażla u halla f'idejn min kien qed imexxi l-affarijiet, ossija il-Ministeru tal-Energija, Saħha u Proġetti, Dr Konrad Mizzi.
257. Stqarr, madanakollu, illi l-Avukati mqabbda biex jagħmlu l-RfP, ossija Ganado & Associates, kienu ingħataw direzzjoni mill-Gvern dwar x'kellha jkollha l-RfP.
258. Mistoqsi dwar il-konnessjoni bejn il-Memorandum of Understanding u r-Request for Proposals, huwa insista illi ma kien hemm ebda konnessjoni bejniethom, peress illi t-tnejn kellhom parametri differenti.
259. Indika wkoll illi l-involvement ta' Steward ma sarx riżultat ta' xi intervent tal-Gvern, iżda ġew minn jeddom, filwaqt illi ma kienx f'posizzjoni jgħid jekk attwalment kinux Vitals illi avviċinawhom.



260. **Ikkonferma illi meta kienu qed isiru diskussjonijiet sabiex Steward jiehu l-konċessjoni, ma saru ebda tibdiliet għall-ftehim oriġinali li kien sar ma' Vitals, u għalhekk l-obbligi oriġinalment assunti għadhom applikabbli.**

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

261. Fix-xhieda tiegħu mogħtija fit-8 ta' Frar 2021, Ronald Mizzi, Segretarju Permanenti fi ħdan il-Ministeru għat-Turiżmu u Protezzjoni tal-Konsumatur, stqarr illi huwa bejn is-snin 2014 sa 2016, kien Segretarju Permanenti fil-Ministeru għall-Energija, Saħħa u Proġetti.
262. Saħaq lill-Qorti illi, sa fejn jaf hu, filwaqt li ma jeżisti ebda addendum għall-ftehim iffirmit mal-Vitals, jeżisti hekk imsejjaħ "*tripartate agreement*" bejn is-soċjetajiet ta' Steward, il-Gvern u l-Bank of Valletta, li jikkonsisti f' "**Direct Agreement**" kif ukoll **Amendment and Restatement Agreement** li gew iffirmati fit-22 ta' Ġunju 2018, u sussegwentement emendat fit-13 ta' Novembru 2018, 17 ta' Lulju 2019 u 27 ta' Awissu 2019, (fol 1465), fejn l-aħħar wieħed kien iffirmit fis-27 ta' Awissu 2019. (fol 1463)
263. Stqarr illi tali ftehim kien neċessarju in vista tat-trasferiment illi sar minn Vitals għal għand Steward, u dana peress wara illi Steward ħadu l-konċessjoni mingħand Vitals u bdew jingħataw self varju mingħand il-Bank of Valletta, l-istess Bank of Valletta ried ikollu garanziji f'idejh biex jagħmel tajjeb għall-flejjes illi hija kienet għaddiet lis-soċjeta' Steward minn meta ħadet it-tmexxija f'idejha l-istess Steward, filwaqt illi s-soċjeta' Steward riedet xi tip ta' assikurazzjoni fil-każ illi l-kuntratt li fiha hija dahlet jiġi dikjarat null u bla effett.
264. Huwa saħaq illi ma kienx involut f'ebda negozjati li wasslu għall-iffirmar ta' tali ftehim, liema ftehim huwa ġie a konoxxenza tiegħu wara li kien iffirmit, iżda madanakollu huwa kien mgħarraf illi l-ftehim ittella' l-Kabinett biex jiġi diskuss u approvat qabel ma ġie ffirmit.
265. Stqarr li huwa infurmat li l-Bank of Valletta plc kellhom t-ħassib tagħhom dwar il-posizzjoni tagħhom f'każ li l-kuntratt meritu tal-kawża odjerna jiġi dikjarat null minn dina l-Qorti u f' din il-kawża.
266. Għarraf illi, sa fejn jaf hu, f'każ illi l-Bank ma kienx jingħata garanzija mill-Gvern, huwa ma kienx ser jipprovi s-self meħtieġ lill-Steward fl-ammont ta' madwar €27,500,000 li, minn naħa tagħhom, kien meħtieġ sabiex tkun tista' tinbena l-iskola medika ta' Barts ġewwa Għawdex.
267. Fuq domanda lilu magħmula, stqarr illi l-ftehim sar in vista tal-kawża odjerna.
268. Ikkonferma wkoll l-kumpliment tal-penali hija dik relatata ma' '*non rectifiable event of default*' aċċettata mill-Gvern f'każ li l-ftehim oriġinali jiġi dikjarat null.

269. Jirrizulta illi l-ftehim li sar fis-27 ta' Awissu 2019, jipprovdi, fil-preambolu tiegħu, s-segwenti: (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, addendas 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. Jirrizulta illi, fost l-affarijiet li hemm ikkontemplati u maqbula fil-ftehim, hemm sezzjoni li tirrigwarda "**Termination of the Concession**" u ttiprovdi dan li ġej:

*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 (sottolinjar tal-Qorti), 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. Jirrizulta illi skond is-Services Concession Agreement iffirmit bejn il-Gvern u Vitals fit-30 ta' Novembru 2015, (fol 1884-1954), jingħad, is-segwent:

*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. Jirriżulta illi l-Iskeda 7 tal-Ftehim li, f'każ ta' "*Termination due to a GoM Event of Default*", il-penali dovut mill-Gvern lill-Konċessjonarju għandu jkun ta': (fol 1946)

**"Lender's Debt + Eur 100 million (hundred million Euro)**

273. Jirriżulta, għalhekk, illi l-permezz ta' ftehim datat minn Dr Konrad Mizzi fis-27 ta' Marzu 2019, il-ftehim oriġinali tat-30 ta' Settembru 2015 gie mibdul sabiex, f'każ illi tali ftehim jiġi annullat minn Qorti, l-Gvern iħallas lis-soċjeta' Steward €100,000,000 f'penali filwaqt illi jassumi d-djun kollha tagħha.

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

274. Fix-xhieda tiegħu mogħtija fl-1 ta' Marzu 2021, Mr Chris Fearne, Deputat Prim Ministru u Ministru tas-Saħħa, li, fi żmien il-kuntratt, kien Segretarju Parlamentari fi ħdan il-Ministeru tal-Energija, Saħħa u Proġetti, stqarr illi huwa **qatt ma kien jaf u/jew mgħarraf bl-eżistenza ta' xi Memorandum of Understanding illi seta' sar dwar l-Isptar ta' Ghawdex, liema Memorandum kien gie a korrent tiegħu biss mill-mezzi tax-xandir.**

275. Saħaq illi, meta kienet saret preżentazzjoni fil-presenza tiegħu, tal-Malta Enterprise, fil-bidu tas-sena 2015, tali preżentazzjoni kienet saret unikament minn Mario Vella, dak iż-żmien Chairman ta' Malta Enterprise, u nies oħra impjegati mal-Malta Enterprise, li kienu għarrfuh illi kien hemm *Memorandum of Understanding*, li iżda kien spicċa, iżda ma min tali Memorandum kif iffirmat qatt ma gie lilu żvelat.

276. Insista illi, tul il-proċess kollu kemm tal-RfP kif ukoll tal-għażla finali, is-Segretarjat Parlamentari tas-Saħħa li kien involut fiħ hu, ma kien involut bl-ebda mod, u tmexxa kollox minn Konrad Mizzi, dak iż-żmien Ministru tas-Saħħa, mingħajr ma qatt involva lil Mr Fearne.

277. Stqarr li meta kienet saret preżentazzjoni lill-Kabinett tal-proġett, f'liema stadju iżda ma setax jiftakar, jekk kienx meta kien ser jinħareġ l-RfP jew inkella meta kienet ġia ingħata il-konċessjoni, huwa kien minnufih esprima t-tħassib tiegħu dwar il-proġett, fejn qal li l-*Private Public Partnership* kif ippreżentata ma kienx tagħmel sens.

278. Dwar il-proġett inniffsu, huwa stqarr illi kien hemm varji livelli ta' skrutinju li kellhom isiru mal-konċessjonarju hekk kif il-ftehim kien iffirmat.
279. L-ewwel livell kien dak li jirrigwarda il-livell tal-istandards tas-servizzi tas-saħħa ġewwa l-Isptar, fejn stqarr li l-livell ta' standard tas-saħħa ġewwa l-Isptar ta' Għawdex tjiebu u nġiebu apparat meħtieġa.
280. It-tieni livell kien dak illi jirrigwarda l-infrastruttura, fejn sa qabel l-elezzjoni tas-sena 2017, dina kienet esklussivament f'idejn Projects Malta. Huwa ma kienx sodisfatt bix-xogħol illi kien qed isir, fejn kien ċar li s-soċjeta' Vitals ma kienetx qiegħda tilhaq il-milestones fuqha imposti, u kien għalhekk li nsista li jibda jinvolvi l-Ministeru direttament fil-proġett, tant illi holoq team għal dan il-għan, li kkonċentra prinċiplament fuq l-iskola Medika ta' Barts, illi kienet mħassba ħafna dwar il-fatt li l-bini kienu għadu ma tlestix u l-kompletament tal-proġett kien lura ħafna.
281. Stqarr illi, sussegwentement, wara li beda jgħib ir-rizultati mixtieqa fil-proġett ta' Barts, huwa beda jikkonċentra fuq l-Isptarijiet ta' Malta, u dwar dan, huwa kellu dan xi jgħid:

*Imbagħad bdejna nikkonċentraw fuq il-masterplan tal-isptarijiet il-ġodda ta' St Luke's u Karen Grech ... emm ... pero' rrid ngħid illi jien at one point, anke waqt in-negozjar kont qed ninduna li minkejja kont qed ninnegozja jien u nitkellem jien ma' Steward, kienu qed isiru negozjati in parallel ma' ... ma' ... mal-Ministru Mizzi wkoll emm ... jiena dika ma kontx kuntent biha dik is-sitwazzjoni u fil fatt kont emm ... waslet eventwalment biex f'Novembru tal-2019 jiena preparajt memo biex ngħid isma' jew il-konċessjoni kollha ħa tkun responsabbilta' tal-Ministru tas-Saħħa mill-bidu sa l-aħħar jew il-konċessjoni mhux se jkollha aktar involviment tal-Ministru tas-Saħħa. Emm ... dik il-memo kellha titla' fit-28 ta' Novembru tal-2019 u dakinhar bħal ma tafu intom Konrad Mizzi irriżenja minn Ministru.*

282. Dwar tali diskussjonijiet li kienu qed isiru minn Steward ad insaputa tiegħu parallelament għall-diskussjonijiet li kellu hu ma' Steward, Dr Fearne kellu dan xi jgħid:

*Mela jiena ħa ngħidlek ehe ... il ... mela fl-2019 ... jista' jkun anke fl-aħħar tal-2018 ... emm ... Steward kienu qegħdin iwasslu il ... il-veduta tagħhom illi bħala Ministeru tas-Saħħa ahna konna ninterpretaw partijiet mil-LSA u mill-concession emm ... b'mod rigoruż biex il-pagamenti li huma ħassu li kellna ngħaddulhom ma kinux qed ngħadduhom fl-intier tagħhom, fl-opinjoni tagħhom. Ahna konna qed ngħidu li qed ninterpretawha mod ieħor. Emm ... u allura kienu qed jgħidulna li bil-livell ta' servizz li konna qed nistennew, u bil mod kif qed ninterpretaw b'mod rigoruż il ... emm ... partijiet mill-concession, il-concession kien qed ikollhom problema biex iħaddmuha mingħajr ma jitilfu flus. U allura riedu jifthi diskussjonijiet oħra. Jiena kont qed niddiskuti magħhom pero' sa dan it-tant skoprejt illi kienu qegħdin jiddiskutu l-istess ħaġa ma' ... mal-Ministru Mizzi u mal-uffiċċju tal-Prim Ministru. Emm ... eventwalment il-Ministru Mizzi ippreżenta non binding*

*MoU li kien riżultat ta' dawn id-diskussjonijiet illi jiena għamiltha ċara li ma naqbilx miegħu u mbagħad wasalna f'dan il-pass tal-aħħar ta' Novembru.*

283. Stqarr illi, dwar ix-xogħol li kellu jsir, il-Medical School kienet issa lesta filwaqt illi “*il-binijiet tal-Isptar, bħal ma jaf kulhadd, ma humiex lesti.*” Stqarr li huwa ġie mgħarraf li x-xogħolijiet ma setgħux isiru peress illi kien maħsub li dawna x-xogħolijiet isiru permezz ta' DNO, iżda sussegwentement irriżulta li dana ma kienx possibbli, u għalhekk il-proċess tal-applikazzjoni tal-Ippjanar ħadet iż-żmien tagħha.
284. Dwar it-trasferiment tal-Ishma minn Vitals għal għand Steward, huwa stqarr illi ma huwiex a korrent illi tali trasferiment qatt ingħaddiet lill-Kabinett għall-approvazzjoni tagħha, u saħaq illi huwa qatt ma kien jaf li kien hemm xi diskussjonijiet li Steward jieħdu l-kumpanija mingħand Vitals qabel ma attwalment sar il-fethim.
285. Dwar il-kwistjoni tal-penali dovuti mill-Gvern f'każ li l-kawża odjerna tintilef, huwa saħaq li filwaqt li l-Gvern kien lest jagħmel tajjeb għad-djun mal-Bank, ma huwiex a korrent tal-fatt li l-penali ta' mitt miljun euro imposta fuq il-Gvern minn Steward hija attwalment dovuta, fejn stqarr li jinsab mgħarraf li dana ma kienx il-każ.
286. Stqarr illi s-Segretarjat tiegħu l-ewwel li kien involut fil-proġett kien wara illi l-Kumitat tal-Evalwazzjoni u Aġġudikazzjoni kienet għażlet is-soċjeta' Vitals bħala Preferred Bidder.
287. Mistoqsi jekk jafx jekk is-soċjeta' Vitals gābitx il-finanzjament illi kienet wiegħdet li ggib fil-proposta tagħha, huwa stqarr li, filwaqt li ma għandux informazzjoni dwar finanzjamenti oħra, jinsab infurmat li s-soċjeta' Vitals ottjena self mill-bank lokali Bank of Valletta, illi għaliha qieghda jagħmilha ta' guarantor il-Gvern Malti.
288. Stqarr illi l-Isptar St Luke's, minkejja l-obbligi imposti fuq is-soċjeta' Vitals, fejn kellhom jipprovdu numru konsiderevoli ta' sodod, minn dan għadu ma sar xejn sa llum, salv illi infetħet parti mill-Isptar għal Orthonics u għall-Physiotherapy.
289. Saħaq illi, fil-mument li nqalgħu disgwidi bejnu u bejn il-Ministru Mizzi dwar negozjati ma' Steward, hu kien qieghed joġġezzjona għal talbiet ta' Steward għal židiet fil-ħlasijiet, haġa li, mill-banda l-oħra, Dr Mizzi ma kienx qed jaqbel, tant illi ffirmat *'non binding Memorandum of Understanding'* ma' Steward fejn ħlasijiet kellhom isiru kif riedu Steward.
290. Insista illi, hekk kif irriżenja Dr Mizzi, u għalhekk ha r-responsabbilta' shiha tal-Isptar f'idejh hu, insista ma' Steward li n-non binding Memorandum of Understanding li kien għamel Dr Mizzi ma kienx validu għalih u li kien għadu qed jinsisti li ma jsirux ħlasijiet addizzjonali – meta xehed Dr Fearne, għarraf illi kienu għaddejjin negozjati f'dak is-sens.
291. Dwar il-posizzjoni tal-Gvern mas-soċjeta' Steward illum il-ġurnata, Dr Fearne qal is-segwenti:

*Mela emm ... f'dawn l-aħħar ... mill-inqas sena ... ilna ninnegozjaw ... meta qed ngħid ilna ninnegozjaw ... mhux biss il-Ministeru tiegħi imma l-Ministeru tal-Finanzi u l-Uffiċċju tal-Prim Ministru ... ma' Steward's Health Care dwar il-futur ta' din il-konċessjoni. Intom tgħallmuni l-avukati ... pacta sunt servanda jgħidulha ... ma bdejniex minn xejn imma bdejna minn dak illi għandkom quddiemkom u qegħdin ninnegojaw. Emm ... is-servizz ... is-servizz jibqa' l-aktar haġa importanti. Il-konċessjoni iffirmata hi li hi emm ... imma ehe rridu naraw li l-poplu emm ... jieħu ... jieħu s-servizz tajjeb ukoll. Għaddejjin ... u nisperaw ...*

292. Dwar il-ftehim li sar minn Dr Konrad Mizzi fis-27 ta' Awissu 2019 fejn il-Gvern obbliga ruħu li jhallas penali, Dr Fearne saħaq illi dana seħħ fiż-żmien illi kienu qed isiru affarjiet ad insaputa tiegħu u minn wara dahru minn Dr Mizzi, u li għalhekk huwa ma kien jaf assolutament xejn dwarhom, liema kuntratt eventwalment wassal sabiex huwa jippreżenta memo uffiċċjali lill-Kabinett li kellu jiġi diskuss dakinhar illi eventwalment il-Ministru Mizzi kien irriżenja mill-kapaċita tiegħu ta' Ministru – 26 ta' Novembru 2019 (liema riżenja, din il-Qorti tosserva, ġrat wara illi dakinhar stess Dr Mizzi kien xehed quddiem dina l-Qorti fil-kawża odjerna).

293. Insista wkoll illi, meta dak il-ftehim kien ġie spjegat lill-Kabinett, kien ġie spjegat li l-Gvern kien biss ser jagħmel tajjeb għall-loans tal-Bank of Valletta – ebda referenza ma kienet qatt saret għall-fatt li l-Gvern kien ser jobbliga ruħu li jhallas penali ta' mitt miljun f'każ li l-kuntratt jiġi annullat minn dina l-Qorti.

#### **XIX. Marthese Debono (Vol IX – fol 2141 sa 2152 u Vol X – fol 2425 sa 2444)**

294. Fix-xhieda tagħha mogħtija fit-12 ta' April 2021, Marthese Debono, rappreżentanta tal-Awtorita' tal-Ippjanar, mitluba tixhed dwar applikazzjonijiet għal kull tip ta' rikostruzzjoni minn Vitals Global Healthcare, Steward Healthcare jew xi kumpannija affiljata, tal-Isptar San Luqa, tal-Isptar ta' Karin Grech jew fl-Isptar Għawdex mis-sena 2015 'l quddiem, stqarret illi kien hemm varji applikazzjonijiet.

295. Permezz ta' **applikazzjoni Nru 3134/16** tat-tip '**Full Development Permission**', ippreżentat fl-24 ta' Mejju 2016, is-soċjeta' Vitals Global Healthcare Management Limited, li għaliha kien jirrispondi Ram Tumuluri skond l-applikazzjoni stess, għamlet Talba ta' Żvilupp għal 'St Lukes' Hospital', u l-Proposta kienet "**Restoration of elevation of main building within St. Luke's Hospital Complex**", liema permess ġie akkordat fit-2 ta' Settembru 2016. (fol 2153 sa 2207)

296. Jidher illi, skond dokument datat 7 ta' Ottubru 2016 (fol 2445), ix-xogħol kellu jinbeda fil-15 ta' Ottubru 2016.

297. Ma hemm ebda indikazzjoni jekk tali xogħolijiet nbdewx u/jew jekk ġewx konkluzi.

298. Permezz ta' **Development Notification No 1283/17** ippreżentata fil-15 ta' Diċembru 2017, tat-tip '**Development Notice**', is-soċjeta' Vitals Global Healthcare Management

- Limited, li għaliha jirrispondi Ram Tumuluri skond l-applikazzjoni stess, għamlet talba għal '*Minor alterations to St. Luke's Medical School*'. (fol 2207 sa 2223)
299. Ma jidher li kien hemm ebda 'Commencement Notice' ipprezentata sabiex jindika li xogħolijiet attwalment kienu inbdew.
300. Permezz ta' **applikazzjoni Nru 1535/20**, tat-tip '**Outline Permit**' ipprezentat fl-20 ta' Diċembru 2019, is-soċjeta' Steward Malta Assets Limited għamlet talba deskritta bhala '*Masterplan for the rehabilitation and upgrading of St Luke's Hospital for medical healthcare and ancillary facilities*'. (fol 2225 sa 2231)
301. Jidher li wara talba għall-estenzjoni taż-żmien biex l-applikant Steward jipprovdu aktar dettalji, fl-20 ta' Mejju 2020 s-soċjeta' Steward giet mgħarrfa illi l-applikazzjonijiet kienet qed tiġi sospiża in vista ta' nuqqasijiet varji, inizzjalment sal-21 ta' Mejju 2020 (fol 2450), u sussegwentement sal-20 ta' Mejju 2022.
302. Ma hemm ebda indikazzjoni jekk sarx xi żvilupp ieħor in konnessjoni ta' tali applikazzjoni li għalhekk il-Qorti tqis illi għadha pendenti.
303. Permezz ta' **applikazzjoni nru 1635/20**, tat-tip '**Full Development Permit**' ipprezentat fid-19 ta' Frar 2020, is-soċjeta' Steward Malta Assets Limited għamlet talba deskritta bhala '*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 sa 2236).
304. Jirriżulta illi fis-6 ta' Mejju 2020, l-Awtorita' talbet hafna kjarifiki u informazzjoni mhux pprovduti kif ukoll hlas ta' €148,835 fi spejjeż. (fol 2452 sa 2455)
305. Jidher illi fl-10 ta' Novembru 2020, saret talba mis-soċjeta' Steward sabiex jiġi estiż il-perjodu għas-sottomissjonijiet tal-pjanijiet sad-19 ta' Novembru 2021, liema permess ingħata mill-Awtorita' fit-18 ta' Novembru 2020.
306. Ma hemm ebda indikazzjoni jekk sarx xi żvilupp ieħor in konnessjoni ta' tali applikazzjoni li għalhekk il-Qorti tqis illi għadha pendenti.
307. Permezz ta' **applikazzjoni Nru 5493/16** tat-tip '**Full Development Permit**' ipprezentat fil-11 ta' Awissu 2016, is-soċjeta' Vitals Global Healthcare Management Limited, li għaliha kien jirrispondi Ram Tumuluri skond l-applikazzjoni stess, għamlet Talba ta' Żvilupp għal 'Gozo General Hospital', u l-Proposta kienet "*Demolition of existing structures and construction of 3 storey and 1 receded floor of medical school*", liema permess gie akkkordat fl-14 ta' Frar 2017. (fol 2237 sa 2248)
308. Tali permezz jirrigwarda l-bini tal-Iskola Medika gewwa Għawdex.



309. Jirriżulta illi skond dokument iffirmit fis-7 ta' Marzu 2017, ix-xogħol kellu jinbeda fis-17 ta' Marzu 2017 (fol 2447).
310. Ma ingiebet ebda prova illi tali xogħolijiet saru, madanakollu il-Qorti tifhem illi l-iskola medika infetħet, u għalhekk, il-Qorti tasal biex tifhem li, possibbilment, tali xogħolijiet saru.
311. Permezz ta' **applikazzjoni Nru 7491/16**, tat-tip **Full Development Permit**, ippreżentat fl-14 ta' Novembru 2016, is-soċjeta' Vitals Global Healthcare Management Limited, li għaliha kien jirrispondi Ram Tumuluri skond l-applikazzjoni stess, għamlet Talba ta' Żvilupp għal 'Gozo General Hospital', u l-Proposta kienet "*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 sa 2359).
312. Jirriżulta illi fid-9 ta' Frar 2017, l-Awtorita' talbet ħafna kjarifiki u informazzjoni mhux pprovduti kif ukoll ħlas ta' €135,487 fi spejjeż. (fol 2456 sa 2460)
313. Jidher illi fi Frar 2017 saret talba sabiex jiġi estiż il-perjodu għas-sottomissjonijiet tal-pjanijiet, u permezz ta' ittra datata 22 ta' Frar 2021 indirizzata lil Steward Malta Assets Limited, estenzjoni ingħatat sal-1 ta' Settembru 2021.
314. Ma hemm ebda indikazzjoni jekk sarx xi żvilupp ieħor in konnessjoni ta' tali applikazzjoni li għalhekk il-Qorti tqis illi għadha pendenti.
315. Jirriżulta illi, permezz ta' **applikazzjoni Nru 9895/17** tat-tip **Full Development Permit**, ippreżentat fit-12 ta' Frar 2018, is-soċjeta' Vitals Global Healthcare Management Limited, li għaliha kien jirrispondi Ram Tumuluri skond l-applikazzjoni stess, għamlet Talba ta' Żvilupp għal 'Gozo General Hospital', u l-Proposta kienet "*Demolition of part of existing hospital and erection of proposed stores*" (fol 2368 sa 2386).
316. Permezz ta' **applikazzjoni Nru 1040/19** tat-tip '*Full Development Permission*', ippreżentat fl-21 ta' Jannar 2019, is-soċjeta' Steward Malta Assets Limited, għamlet Talba ta' Żvilupp għal 'Gozo General Hospital', u l-Proposta kienet "*Proposed installation of oxygen tank and safety fence*", liema permess gie akkordat fid-19 ta' Ġunju 2019. (fol 2396 sa 2404)
317. Jirriżulta illi permezz ta' dokument iffirmit fis-7 ta' April 2020, ix-xogħol, identifikat bħala 'Emergency Works', kellhom jinbdew fis-7 ta' April 2020. (fol 2448)
318. Permezz ta' **applikazzjoni DN 168/20** tat-tip '*Development Notification*', ippreżentat fis-17 ta' Frar 2020, is-soċjeta' Steward Malta Assets Limited, għamlet Talba ta' Żvilupp għal 'Gozo General Hospital', u l-Proposta kienet "*To sanction minor*

*alterations to plant area*, liema permess ġie akkordat fis-17 ta' Frar 2020. (fol 2410 sa 2413).

**XX. Engineer James Grima (Vol X –fol 2470)**

310. Fix-xhieda tiegħu mogħtija permezz ta' affidavit ta' pagna waħda pprezentata fl-24 ta' Settembru 2021, l-Engineer James Grima, huwa l-unika xhud imressaq mis-soċjetajiet intimati Steward, u stqarr illi huwa Director of Facilities Management fi ħdan l-isptarijiet operati minn Steward, ossija l-Isptar Ġenerali t'Għawdex, l-Isptar Saint Luke's u l-Isptar Karin Grech.
311. Eżebixxa rapport ta' li jikkontjeni serje ta' ritratti li juru varji xogħolijiet illi saru fl-Isptarijiet, li jinkludu s-segwenti: (Vol X - fol 2471 sa 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) *Orthopedic 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. Atti tal-kawża Rikors nru 98/21 RGM ‘Steward Malta Limited vs Medical Association of Northern Virginia Inc Profit Sharing Plan’ (Vol X - fol 2512 sa 2527)**

312. Jirriżulta illi, fit-3 ta’ Frar 2021, is-soċjetajiet intimati Steward, fi proċeduri mhux konnessi direttament mal-kawża odjerna iżda relatati mal-konċessjoni meritu tal-kawża odjerna, ossija infurzar ta’ deċiżjoni tal-Qrati Ingliżi ġewwa Malta, ipprezentaw proċeduri a tenur tal-Artikolu 46 tar-Regolament tal-UE 1215/2012, sabiex tikkontesta l-eżekuzzjoni ta’ deċiżjoni mogħtija kontra tagħha ġewwa r-Renju Unit fis-sena 2020.
313. Jirriżulta illi l-argumentazzjoni tas-soċjeta’ Steward li biha hija kienet qiegħda togħżzjona għall-eżekuzzjoni tas-sentenza mogħtija kontra tagħha kien is-segwent:

*26. Ricentement, fi żmien meta l-proċeduri quddiem il-Qorti fir-Renju Unit kienu waslu fi stadju avanzat hafna, irriżulta illi l-Konċessjoni kienet oriġinarjament giet mogħtija bhala konsegwenza diretta tal-aġir frawdolenti tal-investituri tagħha (inkluż Gupta) fil-Proġett tas-Saħħa, u dan bi ksur ta’ regolamenti dwar akkwist pubbliku;*

...

*32. Għalhekk, dan kollu jissuġġerixxi illi uffiċjali tal-Gvern ta’ Malta ta’ dak iż-żmien, flimkien mal-investituri (inkluż Dr Ambrish Gupta, hekk kif ampjament ikkonfermat fl-NAO Report) daħlu fi ftehimiet sigrieti, qabel ma beda l-proċess ta’ tendering, liema ftehimiet taw il-konċessjoni (li kienet direttament benefiċċjali għall-investituri) qabel ma kien sar il-proċess ta’ tendering. Dan jagħti x’jifhem illi kien hemm nuqqasijiet serji fil-proċess ta’ tendering innifsu. Dan il-fatt, flimkien ma’ elementi oħra bħal comfort letter mill-Bank of India li ntbagħtet qabel l-RfP illi espressament tirreferi għall-*

*proġetti Maltin, wassal lin-NAO tikkonkludi li kien hemm kollużjoni bejn il-partijiet, bl-istruttura u l-ordni tal-procurement maqbula qabel u li l-proċess tal-akkwist pubbliku li sar kien intenzjonat sabiex ikun eżerċizzju superfiċjali li wassal għal riżultat li kien diġa determinat;*

...

*41. Il-pagamenti dovuti taħt is-Settlement Agreement, li kien iffrmat sabiex jiġu solvuti tilwimiet li huma direttament relatati mal-qbil ta' kollaborazzjoni fil-Konċessjoni, huma riżultat ta' kollużjoni li kienet identifikata fl-NAO Report u l-Addendum bħala waħda li tikkostitwixxi nuqqas serju fil-procurement process. B'riżultat ta' dan, il-kisba tal-eżekuzzjoni tas-Sentenza f'Malta tikkostitwixxi ksur tal-istrateġija pubblika ta' Malta, u dan minhabba l-prinċipju li ex turpi causa non oritur actio;*

...

*46. Għalhekk, is-Sentenza m'għandhiex tkun eżegwibbli f'Malta għaliex hija tikser l-istrateġija pubblika ta' Malta b'mod flagranti. L-Intimata m'għandhiex tithalla tagħmel qligħ mill-irregolarita' imwettqa minnha, tramite l-involviment tagħha fil-kollużjoni li wasslet għall-għoti ta' l-Konċessjoni lil VGH qabel ma biss beda t-tendering process. Barra minn hekk, apparti dan, l-eżekuzzjoni tas-sentenza f'Malta ma tkunx fl-interess pubbliku, għaliex dan mhuwiex sempliċiment każ ta' preġudizzju għad-drittijiet ta' entita' privata (ir-Rikorrenti) iżda, skema li sfat imwettqa bi preġudizzju għas-soċjeta' Maltija in general, u għandha konsegwenza diretta fuq is-sistema tas- saħħa ta' Malta;*

...

*Għaldaqstant, in vista ta' dak kollu suespost u salv kwalsiasi dikjarazzjoni neċessarja u opportuna li din il-Qorti jidhrilha xierqa u opportuna, ir-Rikorrenti jitolbu lil din l-Onorabbli Qorti jogħgobha tirrifjuta l-eżekuzzjoni tas-Sentenza f'Malta abbażi tar-raġunijiet hawn fuq imsemmija, bl-ispejjeż kontra l-Intimata.*

314. Jirriżulta illi tali proċeduri ġew irtirati mis-soċjeta' Steward fil-15 ta' Frar 2022, filwaqt illi ebda raġuni ma nġhatat mis-soċjeta' Steward għalfejn ġew irtirati – presumibbilment, intlaħaq xi ftehim.

## **XXII. Perit Joseph Attard (Vol X - Fol 2530)**

315. Fl-affidavit ta' paġna tal-Perit Joseph Attard, ippreżetat fl-10 ta' Diċembru 2021, bħala Kap Eżekuttiv tal-Kumpannija INDIS Malta Ltd, illi preċedentement kienet magħrufa bħala Malta Industrial Parks Limited, huwa stqarr illi l-għan ewlieni tal-INDIS hija sabiex tiġġestixxi oqsma Industrijali skont l-Att dwar l-Artijiet, liema mansjonijiet kienu preċedentement responsabbli ta' tal-Kummissarju tal-Artijiet.

316. Stqarr illi huwa daħal fil-kariga reċentement u ma kellu ebda involviment fl-iffirmar tal-kuntratt fit-22 ta' Marzu 2016.

**XXIII. Rapport tal-Awditur Ġenerali datat Diċembru 2021 intitolat ‘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. Jirriżulta illi f'Diċembru 2021, l-Awditur Ġenerali ippreżenta t-tieni parti tal-investigazzjoni minnu magħmula, fuq talba tal-Public Accounts Committee, fejn saret “*A Review of the Contractual Framework*”<sup>4</sup>.

318. Jirriżulta illi tali rapport, ta' erbgħa mija u erbgħa u sittin (464) paġna, huwa tkompliġja tar-rapport inizjali ppreżentat f'Lulju tas-sena 2020, fejn din id-darba l-Awditur Ġenerali, din id-darba, eżamina l-aspett Kuntrattwali tal-għoti tal-Konċessjoni.

319. Filwaqt illi ma huwiex loġistikament fattibbli illi r-rapport kollu jiġi hawn riprodott, din il-Qorti, madanakollu, jidrilha xieraq u opportun illi tagħmel referenza għall-uħud mill-kummenti u konkluzjonijiet illi saru, liema kummenti, għal darba, tirrabixxi, illi tqis illi għandha tagħmel bħala tagħha wkoll.

320. Dwar il-proċess kollu illi kien adoperat u li wassal għall-għoti tal-kuntratti finali, l-Awditur Ġenerali kellu dan xi jgħid:

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

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

**7 Evident in records retained by the Steering Committee and of concern to the NAO was that Government was not adequately prepared for this concession. Noted was that services that were to be procured were still to be**

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

**defined even though the Request for Proposals (RfP) had already been issued a month prior.**

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

9 Despite the disagreement outlined in the preceding paragraph, the PS MOT and the PS MFH were consistent in their views that the dichotomy that characterised the work of the MEH, with the MEH-Health responsible for the health operations side of the concession and the MEH-Energy responsible for the capital element, contributed to implementation failure. It is with concern that the NAO notes that despite the restructuring of ministerial portfolios, which ought to have shifted the project away from the responsibility of the Hon. Konrad Mizzi, in his various roles as Minister for Energy and Health, Minister within the OPM and Minister of Tourism, this never materialised. 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. Dwar is-**'Services Concession Agreement'** u l-implimentazzjoni tiegħu, l-Awditur Ġenerali għandu dan xi jgħid:

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 this amendment as indicative of the poor planning of the project on the part of Government and the inadequacy of the VGH in implementing that contracted.***

*37 The SCA regulated the measures that were to be followed in case of the termination of the Agreement and applicable termination payments arising therefrom. Several circumstances that allowed for the Government to terminate the SCA prior to the expiry of its term were outlined. Under all cases of termination triggered by the Government, the termination payment was to consist of €100,000,000 and the sum of the lender's debt incurred.*

*Other scenarios that allowed for termination of the SCA related to non-rectifiable events of default committed by the VGH. Of note to the NAO was that in the event of this kind of termination, the Government would assume the lenders' debt in full and extinguish it. **The assumption of this risk by Government heightens the importance of the selection of a concessionaire of sound financial and technical standing and exacerbates the many failures of the VGH to match this standard.***

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

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

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

*Graver still was that the Government's representatives were systematically granting waivers to the VGH of the requirement to secure financing without prior referral to Cabinet for authorisation. In a consistent manner, the Hon.*

*Konrad Mizzi, in his various capacities as a Minister of Government, first entered into agreements or commitments with the VGH to extend financial close, then sought Cabinet’s approval.*

322. Dwar il-“**Health Services Delivery Agreement**”, l-Awditur Ġenerali kellu s-segweni tħassib u kummenti:

*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. Dwar il-“**Labour Supply Agreement**”, l-Awditur Ġenerali għamel is-segweni konstatazzjonijiet:

*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. Dwar il-**Konċessjoni Emfitewtika** illi hija meritu tal-kawża odjerna, l-Awditur Ġenerali kellu dan xi jgħid:

*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. L-Awditur Ġenerali jikkummenta wkoll dwar il-posizzjoni finanzjarja tal-Vitals Global Healthcare Group, u jagħmel is-segweni osservazzjonijiet u tħassib:

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

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

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

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

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

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

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

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

**XXIV. Robert Vella u Dr Marisa Grech, bhala rappreżentanti tal-Awtorita' tal-Artijiet.**  
(Vol X – fol 2766, 2767)

326. Jirriżulta illi fl-affidavits tagħhom ta' pagna kull wieħed, Robert Vella, bhala Kap Eżekuttiv tal-Awtorita' tal-Artijiet, u Dr Marisa Grech, bhala Chief Officer tas-Sezzjoni tal-Kuntratti fi hdan l-Awtorita' tal-Artijiet, t-tnejn saħqu li, permezz ta' Avviż Legali Nru 94 tas-sena 2016 u l-Avviż Legali 95 tal-2016, l-Awtorita' trasferiet kull dritt u obbligu lil Malta Industrial Parks Limited, illum INDIS Malta Limited, illi hija kellha fuq l-artijiet illi ġew trasferiti lis-soċjetajiet intimati Vitals.

**XXV. Mario Galea** (Vol XI – fol 2775 sa 2789)

327. Fix-xhieda tiegħu mogħtija fil-15 ta' Marzu 2022, Mario Galea xehed li bejn Jannar u Ġunju tas-sena 2016, huwa kien CEO tal-Malta Industrial Parks Limited, kif kienet tissejjaħ dak iż-żmien, fejn stqarr illi huwa sab proġett lest u approvat meta daħal. Madanakollu, stqarr illi huwa kien ipproċeda bex qabbad ditta tal-awdituri, ossija RSM, sabiex jevalwaw l-għoti tal-art lill-Vitals u jekk dan kienx ta' benefiċċju għall-pajjiż f'termini ta' impjiegi.

328. Fir-rapport, ippreżentat fil-21 ta' Marzu 2016, (Vol XI – fol 2791 sa 2796) ossija ġurnata qabel ma ġie ffirmat il-Kuntratt meritu tal-kawża odjerna, il-proġett ġie deskritt mill-awdituri kif ġej:

*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 hospital to convert it into a 175 bed longterm 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. L-Awdituri appuntati minn Malta Industrial Park Limited għarrfu illi bħala xogħol tagħhom huma għamlu s-segwenti:

*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.** (sottolinjar tal-Qorti) 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. Wara illi għamli l-konstatazzjonijiet tagħhom abbażi ta' dak li ddikjarat is-soċjeta' Vitals u l-operazzjoni ta' “*medical tourism*” kif promossa mill-istess Vitals, tali ditta għaddiet biex għamlet is-segwenti konkluzjonijiet:

*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. Huwa saħaq illi abbażi ta' dak ir-rapport saru n-negozjati da' parte tal-Avukati tal-INDIS Malta Limited u sussegwentement, wara tali negozjati, għe ffirmat il-ftehim finali.

332. Dwar il-fatt li ma saritx audit tas-soċjeta' Vitals da' parte tal-RSM Malta, ix-xhud stqarr illi:

*Jiena xogħli kien li nara ... bħala MIP issa qed ngħid ... bħala MIP jiena ridt nara li dan il-proġett jaqa' fl-eligibility condition tal-Lands Act. That was my aim. L-affarijiet l-oħra ma kinux fir-remit tiegħi.*

**XXVI. Peter Mamo (Vol XI – fol 2797 sa 2804)**

333. Fix-xhieda tiegħu mogħtija fil-15 ta' Marzu 2022, Peter Mamo għarraf lill-Qorti illi fiż-żmien tal-għoti tal-kuntratt, huwa kien id-Direttur tal-Artijiet, liema kariga kienet tkopri il-kariga ta' Kummissarju tal-Artijiet.

334. Huwa għarraf li fid-**9 ta' Frar 2015**, bħala Direttur Ġenerali (Lands), irċieva ittra mingħand l-Executive Chairman ta' Malta Enterprise, Dr Mario Vella, mibgħuta bl-approvazzjoni tal-Ministru tal-Ekonomija Dr Christian Cardona li għaliha kien iffirma fid-9 ta' Frar 2015 u Dr Michael Falzon, Segretarju Parlamentari għall-Ippjanar li għaliha kien iffirma fit-12 ta' Frar 2015, fejn huwa intalab is-segwenti in konnessjoni mal-**Isptar ta' Ghawdex**: (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 inteded 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. Huwa stqarr illi fis-**16 ta' Marzu 2015**, huwa, bħala Kummissarju tal-Artijiet, kien irċieva rikjesta mingħand iċ-Chief Executive Officer u Deputy Chairman tal-Malta Industrial Parks Limited, Joshua Zammit, mibgħuta bl-approvazzjoni tal-Ministru tal-Ekonomija Dr Christian Cardona li għaliha kien iffirma fis-26 ta' Mejju 2015 u Dr Michael Falzon, Segretarju Parlamentari għall-Ippjanar li għaliha kien iffirma fit-18 ta' Mejju 2015, fejn huwa intalab is-segwenti in konnessjoni mal-**Isptar ta' Ghawdex**: (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. Tali ittra kienet kontro iffirmata ukoll minn Dr Mario Vella, bħala Executive Chairman tal-Malta Enterprise.
337. Stqarr ukoll illi, sussegwentement, fis-**6 ta' April 2015**, huwa, bħala Kummissarju tal-Artijiet, irċieva rikjesta addizzjonali mingħand, din id-darba, iċ-Chairman tal-Malta Industrial Parks Limited, Anthony G Zahra, mibgħuta bl-approvazzjoni tal-Ministru tal-Ekonomija Dr Christian Cardona li għaliha kien iffirma fis-26 ta' Mejju 2015 u Dr Michael Falzon, Segretarju Parlamentari għall-Ippjanar li għaliha kien iffirma fit-22 ta' Mejju 2015, fejn huwa intalab is-segweni inkonnessjoni ma' **L-Isptar ta' St. Luke's** u **L-Isptar ta' Riabilitazzjoni ta' Karin Grech**: (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. Flimkien ma' tali ittra, kien hemm annessa wkoll *Clarification Document* illi kien inħareg minn Projects Malta Limited wara talba illi s-soċjeta' Vitals kienet għamlet waqt il-perjodu għall-proposti abbażi tal-RfP illi kienet inħarġet fis-27 ta' Marzu 2015.
339. Saħaq illi sussegwentement giet ippubblikata l-Avviz Legali 94 tal-2016 u dana fit-18 ta' Marzu 2016, liema notice sussegwentement kellha tiġi maħruġa mill-ġdid permezz

ta' Avviż Legali 95 tal-2016 u dana fit-22 ta' Marzu 2016 peress illi fil-pjanta kien hemm xi biċċa art li kienet tinkludi sub station tal-Enemalta li ma kellhiex tiġi inkluża.

340. Insista illi, dwar l-użu u l-iżvlupp tal-art w il-ħtieġa tagħha, huwa ma daħal bl-ebda mod fiha, peress illi kull ma kellu jagħmel huwa jittrasferixxi l-poteri tiegħu bħala Kummissarju tal-Artijiet għal fuq il-Malta Industrial Parks Limited, u wara jaraw kollox huma.

## KONSIDERAZZJONIJIET

### Baži tal-Azzjoni

341. Wara illi dina l-Qorti għamlet rassenja tax-xhieda u dokumentazzjoni kollha illi hija dehrilha kienu rilevanti għal każ ta' llum w illi ġew mressqa u prodotti quddiemha tul il-proċess ta' smieġh ta' xhieda li nżammu quddiem dina l-Qorti, issa jeħtieġ illi dina l-Qorti tidhol fit-talba magħmula mir-rikorrenti u d-difiżi mqajjma mill-varji intimati fil-każ.

342. Huwa fatt inkontestat illi Dr Adrian Delia huwa Membru tal-Kamra tad-Deputati, fejn, fi żmien meta ressaq il-kawża odjerna, huwa kien Kap tal-Opposizzjoni, u llum il-ġurnata għadu Membru tal-Kamra tad-Deputati.

343. Jirriżulta, għalkemm mhux espressament miktub fil-kontenut tar-rikors promotur, iżda ċertament iċċarat fis-smieġh tax-xhieda u fis-sottomissjonijiet dettaljati mressqa mill-abbli konsulent legali tiegħu, illi l-azzjoni odjerna hija bbażata fuq l-Artikolu 33 (2) tal-Kap 573 tal-Liġijiet ta' Malta.

344. L-Artikolu 33 tal-Att dwar Artijiet tal-Gvern, ossija Kap 573, jipprovdi dan li ġej:

*(1) Kull trasferiment ta' art li għaliha japplika l-artikolu 31 li jsir xort'ohra milli skont id-disposizzjonijiet ta' dak l-artikolu jkun null u bla effett.*

*(2) In-nullità ta' trasferiment magħmul bi ksur tal-imsemmi artikolu tista' tintalab mill-partijiet li jkunu involuti fit-trasferiment, mill-Avukat Ġenerali jew minn xi persuna li tkun membru tal-Kamra tad-Deputati fiż-żmien tat-talba quddiem il-Prim' Awla tal-Qorti Ċivili.*

*(3) L-effetti u l-konsegwenzi msemmija fl-artikoli 541 u 543 tal-Kodiċi Ċivili għandhom jgħoddu fuq min jikseb art bi ksur tal-artikolu*

345. Jirriżulta, għalhekk, illi r-rikorrent, bħala Membru tal-Kamra tad-Deputati, avalla ruħu minn dritt lillu mogħti, bħala rappreżentant elett mill-poplu, sabiex jikkontesta deċiżjoni meħuda mill-Gvern tal-ġurnata w l-Awtoritajiet kompetenti li jaqgħu taħt il-kontroll ta' l-istess Gvern, bil-għan illi tali deċiżjoni tithassar.

### Difiżi

346. Jirriżulta li, fil-kawża odjerna, ir-rikorrent ħarrek lil varji persuni, ossija s-segweni:

- **Il-Prim Ministru ta' Malta** ta' meta nbdiet il-kawża odjerna, Dr Joseph Muscat, liema kariga sussegwentement ġiet assunta minn Dr Robert Abela fit-13 ta' Jannar tas-sena 2020.
- **L-Avukat Ġenerali.**
- **Il-Kap Eżekuttiv tal-Malta Industrial Parks Limited**, sussegwentement imsejha INDIS Malta Ltd.
- **Il-Kap Eżekuttiv tal-Awtorita' tal-Artijiet** li assumu l-funzjonijiet tal-Kummissarju tal-Artijiet.
- **Ic-Chairman tal-Bord tal-Gvernaturi tal-Awtorita' tal-Artijiet.**
- **Vitals Global Healthcare Assets Limited**, sussegwentement imsejha Steward Malta Assets Limited.
- **Vitals Global Healthcare Limited**, sussegwentement imsejha Steward Malta Limited.
- **Vitals Global Healthcare Management Limited**, sussegwentement imsejha Steward Malta Management Limited.

347. Jirriżulta illi għalkemm il-varji intimati ippreżentaw eċċezzjonijiet separati u distinti abbażi tal-posizzjoni w involviment tagħhom fil-każ, jidher illi, prinċiplament, l-eċċezzjonijiet jistgħu jiġu riassunti fis-segweni:

- **Li ma humiex il-leġittimu kontradittur fil-kawża odjerna** - dina tqajjmet mill-partijiet kollha għajr għas-soċjetajiet Vitals.
- **Li r-rikorrent ma għandux interess ġuridiku fil-kawża odjerna peress illi l-azzjoni ma setgħetx tiġi intentata a tenur tal-Artikolu 33 tal-Kap 573.**
- **Li r-rikorrent ma kienx parti fil-kuntratt li qed jiġi attakat, u għalhekk ma għandux interess ġuridiku jattakah, u dana abbażi tal-prinċipju “Res inter alios acta”.**
- **Li l-kuntratti ta' servizz huma distinti u separati mill-kuntratt ta' konċessjoni emfitewtika.**
- **Li ma kienx hemm ksur tal-kundizzjonijiet kif minnu allegat.**

348. Jirriżulta wkoll illi l-intimati soċjeta' Vitals, sussegwentement Steward, u l-INDIS Malta Ltd qajjmu wkoll eċċezzjoni preliminari ta' natura ta' formalita', ossija illi, bi

ksur tal-Artikolu 156(1) (a) tal-Kap 12, **ma kienx hemm “dikjarazzjoni li tfisser b’mod ċar u sewwa l-oġġett tal-kawża.”**

349. Il-Qorti ser issa tgħaddi biex tagħmel il-konsiderazzjonijiet abbażi tal-varji difiżi mressqa mill-intimati, kif riassunti hawn fuq, iżda mhux neċessarjament fil-kronoloġija kif fuq deskritta:

**A. Rikors Ġurament null għax bi ksur tal-Artikolu 156 tal-Kap 12.**

350. Il-Qorti tibda biex tistqarr ili huwa minnu illi l-formaliżmu huwa parti essenzjali mill-proċeduri ġudizzjarji, stante illi fin-nuqqas tagħhom, il-Qrati jkunu rinfacċjati b’sitwazzjonijiet komplessi u mhux f’lokkom li jistgħu jwasslu sabiex il-Qorti ma tiffunzjonax b’mod effiċjenti u ma tkunx tista’ ssir il-Ġustizzja u l-Ħaqk kif mistenni minnha.

**351. Madanakollu, dana ma jfissirx illi tali formalizmu għandha tintuża b’mod affissjanti sabiex ixekkel u twaqqaf proċeduri li jkunu inbdew quddiemha b’mod legittimu.**

352. Dana qiegħed jingħad għax, fil-każ odjern, filwaqt illi r-rikorrent, fir-rikors promotur tiegħu, naqas milli jindika bil-miktub li l-baži tal-azzjoni tiegħu kienet l-Artikolu 33 tal-Kap 573, liema baži ta’ azzjoni huwa eventwalment indika, kemm fix-xhieda tiegħu kif ukoll fis-sottomissjonijiet tiegħu, mill-assjem tal-korp tar-rikorrent kien johroġ ċar x’kienet l-azzjoni tiegħu – ossija t-tħassir tal-kuntratt mogħti lis-soċjetajiet Vitals abbaži ta’ ksur bis-saħħa mogħtija lil l-Artikolu 33 tal-Kap 573.

353. Għaldaqstant, tali eċċezzjoni mqajjma mis-soċjetajiet Vitals sussegwentement Steward u s-soċjeta’ Malta Industrial Parks Limited, sussegwentement INDIS Limited, ma timmeritax illi tiġi akkolta.

**B. Li l-kuntratti ta’ servizz huma distinti u separati mill-kuntratt ta’ konċessjoni emfitewtika**

354. Il-Qorti, hawnhekk, tibda billi tosserva illi huwa minnu illi dina d-difiża ma hijiex waħda minn ta’ l-ewwel li ressqu l-varji intimati, u di fatti kienet eċċezzjoni li qajjmu prinċipalment il-Prim Ministru u l-Avukat Ġenerali, iżda din il-Qorti tirrileva illi huwa opportun li l-ewwel tqis u tiddeċiedi tali difiża, stante illi għandha rilevanza, eventwalment, fuq id-difiżi l-oħra imqajjma mill-istess intimati.

355. Jirriżulta illi fit-talba tar-rikorrent, partikolarment it-tieni talba tiegħu, huwa talab lill-Qorti sabiex tiddikjara u tiddeċiedi illi r-‘*Related Instruments*’ jiffurmaw parti integrali tal-konċessjoni emfitewtika illi huwa kien qiegħed jattakka.

356. Jirriżulta illi r-raġuni għal tali talba hija ċara għal din il-Qorti – ir-rikorrent qiegħed jikkontendi illi seħħew varji ksur ta’ kundizzjonijiet fir-‘*Related Instruments*’, liema ksur għaldaqstant kellhom jitqiesu bħala ksur tal-Konċessjoni Emfitewtika mogħtija

lis-soċjeta' Vitals Global Healthcare Assets Limited, bir-rizultat li għalhekk it-talba tiegħu tiġi kkunsidrata u possibbilment, milqugħa għal dak li jirrigwarda kemm il-Konċessjoni Emfitewtika, kif ukoll il-varji “*Related Instruments*”.

357. Mill-assjem tal-provi kollha, kif riprodotti quddiem dina l-Qorti, jidher illi kien hemm tlett ‘*Related Instruments*’, li eventwalment wasslu għall-iffirmar tal-Konċessjoni Emfitewtika, li huma s-segwenti:

- **Service Concession Agreement** iffirmit fit-30 ta’ Novembru 2015. (fol 1884 sa 1954)
- **Health Services Delivery Agreement** iffirmit fit-30 ta’ Novembru 2015. (fol 389 sa 463)
- **Labour Supply Agreement** iffirmit fit-8 ta’ Jannar 2016. (fol 464 sa 470)

358. Jirrizulta ukoll illi dawna l-ftehim gew kollha varjati diversi drabi wara illi ġew iffirmati.

359. Jirrizulta illi l-ewwel ftehim illi ntlahaq u li ġie ffirmat wara li s-soċjeta' Vitals ġew magħżula, kien is-**Service Concession Agreement** iffirmit fit-**30 ta’ Novembru 2015**, li fl-introduzzjoni tiegħu jgħid dan li ġej: (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. Jirrizulta illi fi Klawsola 4 ta' l-istess 'Services Concession Agreement', hemm ipprovdut illi:

*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. Jirrizulta illi permezz ta' 'Addendum to Services Concession Agreement' iffirmat fit-30 ta' Ġunju 2017 (fol 1957), Klawsola 4 inbidlet biex tinqara kif ġej:

*"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. Jirriżulta ċar mid-diċitura tas-‘*Services Concession Agreement*’, illi l-iffirmar tal-Konċessjoni Emfitewtika kien pre-rekwiżit ossija *sine qua-non* għall-ftehim kollu, liema ftehim kien jinkludi komplessivament ukoll il-ftehim għas-servizzi tas-Saħħa, ossija *Health Services Delivery Agreement*, kif ukoll il-ftehim li jikkontempla l-haddiema ingaġġati f’tali proġett, ossija ‘*Labour Supply Agreement*’ – mingħajr il-Konċessjoni Emfitewtika, ebda mill-Agreements fuq imsemmija ma setgħu jiġu implimentati.
363. Huwa ċar di fatti, mill-ftehim kollu, illi mingħajr il-Konċessjoni Emfitewtika, ma seta’ jkun hemm ebda Konċessjoni miftiehma mas-soċjeta’ Vitals – il-Konċessjoni Emfitewtika kienet meqjusa essenzjali għall-implimentazzjoni tal-proġett kollu intiż mill-Gvern u mogħti lill-Vitals.
364. Għaldaqstant, bl-istess loġika applikata mill-partijiet, it-tlett ‘*Related Instruments*’ illi saru **qabel** il-Konċessjoni Emfitewtika għandhom ta’ bilfors jitqiesu bħala parti intrinsika tal-Konċessjoni Emfitewtika.
365. Dana qiegħed jingħad, peress illi huwa ċar u implicitu li l-Konċessjoni Emfitewtika ġiet mogħtija lis-soċjeta’ Vitals Global Healthcare Assets Limited **UNIKAMENT** in vista tar-“*Related Instruments*” l-oħra fuq imsemmija. Dana ifisser illi l-Konċessjoni Emfitewtika ma tistax titqies bħala separata u distinta mill-ftehim l-oħra, kif jinsistu l-Prim Ministru u l-Avukat tal-Istat, iżda għandu jiġi kkunsidrat u meqjus flimkien mal-kuntratti l-oħra, ossija ir-“*Related Instruments*’ fuq imsemmija.
366. Hija ovvja li, f’każ li jkun hemm ksur f’wieħed mir-Related Instruments li jwassal għat-terminazzjoni tiegħu, dan iwassal sabiex l-assi u drittijiet mogħtija lis-soċjeta’ Vitals illum Steward sabiex timplimenta dak minna obligat li tagħmel fir-*Related Instrument*, ossija l-użu esklussiv permezz ta’ kuntratt emfitewtiku ta’ propjeta’ intiża għall-skopijiet ta’ saħħa, għandu jiġi terminat wkoll.
367. Il-Qorti tosserva wkoll illi jidher ċar li l-Konċessjoni Emfitewtika hija marbuta intrinsikament mar-Related Instruments, tant illi, fi klawsole 4.3.1 tal-Kuntratt Emfitewtiku inniffsu, hemm dan li ġej iprovdut:

*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. Dwar terminazzjoni, il-Qorti tosserva illi l-istess Konċessjoni Emfitewtika tipprovdi f'Klawsola 4.8 illi:

*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. Ikkunsidrat dan kollu, għalhekk, tenut kont tal-fatt li l-Konċessjoni Emfitewtika kien parti intrinsika minn serje ta' ftehim differenti, riferuti bħala “*Related Instruments*” illi lkoll flimkien kienu jwasslu għall-implimentazzjoni tal-proġett illi l-Gvern esprima x-xewqa li jara lis-soċjeta' Vitals timplimenta, dak ifisser illi l-kundizzjonijiet u obbligi assunti mill-partijiet, kemm il-Gvern ta' Malta, kif ukoll s-soċjetajiet Vitals, fil-varji ftehim li saru, għandhom jitqiesu bħala li jiffurmaw **parti integrali** mill-konċessjoni emfitewtika temporanja tat-22 ta' Marzu 2016 magħmul fl-atti tan-Nutar Dottor Thomas Vella.

370. Għalhekk, it-**Tieni talba** tar-rikorrent timmerita illi tintlaq'.

**C. Li r-rikorrent ma għandux interess ġuridiku fil-kawża odjerna peress illi l-azzjoni ma setgħetx tiġi intentata a tenur tal-Artikolu 33 tal-Kap 573.**

371. L-intimati, lkoll kemm huma, qajmu d-difiża illi r-rikorrent ma kellux l-interess ġuridiku illi jqajjem l-azzjoni odjerna, li huwa għamel abbażi tal-Artikolu 33 tal-Kap 573, fejn lkoll saħqu illi kwalsiasi azzjoni illi setgħet tispetta lir-rikorrent, bħala Deputat tal-Kamra tar-Rappreżentanti, kienet waħda illi huwa seta' jadopera biss sabiex jattakka t-trasferiment per se, f'każ illi xi waħda mill-kundizzjonijiet stabbiliti fl-Artikolu 31 tal-Kap 573 ma kinux ġew osservati.

372. L-intimati, di fatti, jinsistu illi r-rikorrent qiegħed jibbaża il-kawża tiegħu, u qiegħed għalhekk jitlob it-tħassir u nullita' tal-konċessjoni emfitewtika, abbażi tal-fatt illi kien hemm ksur kontrattwali wara li seħħ it-trasferiment, liema ksur allegat, l-intimati jikkontendu, minnu nniffsu, jfisser illi t-trasferiment kien ġia sar u ġie konkluz, u għalhekk ir-rikorrent, bħala Membru tal-Kamra tad-Deputati jkun tilef id-dritt li jikkontesta tali trasferiment. Huwa għalhekk illi l-intimati jinsistu li t-talba tar-rikorrenti ma tistax tiġi meqjusa stante illi, kif jikkontendu huma, hija bbażata fuq ksur kontrattwali u mhux fuq it-trasferiment per se, liema trasferiment hija regolata skond l-Artikolu 31, liema fatt għalhekk ifisser li r-rikorrent ma setax jagħmel l-azzjoni tiegħu odjerna abbażi tal-Artikolu 33 tal-Kap 573.

373. Ir-rikorrent, da parte tiegħu, jishaq illi, abbażi tal-prinċipju *'fraus omnia corrumpit'*, la darba jiġi stabbilit illi l-baži tal-ġhotija tal-kuntratti lis-soċjeta' Vitals kien ivvizzjat b'qerq u vizzju, dak ifisser illi, bħala Deputat tal-poplu, huwa kellu d-dmir u l-obbligu illi jara li l-obbligi assunti kontrattwalment jiġu osservati u, f'każ li dak ma jseħħ, jieħu l-passi opportuni sabiex il-kuntratti relattivi jiġu rexissi.

374. Saħaq ukoll illi kien obbligu ta' kull min kien involut fit-trasferiment, kif ukoll tal-Avukat Ġenerali, sabiex jitlob għan-nullita' tal-kuntratt emfitewtiku, fin-nuqqas ta' liema azzjoni, kien jispetta lilu, bħala membru tal-Kamra tad-Deputati, sabiex jagħmel it-talba għad-dikjarazzjoni ta' nullita' tat-trasferiment.

375. Ir-rikorrent jishaq illi, a tenur tal-klawsola ħmistax (15.1) tas-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 sohowever called of its shares or the shares of its subsidiaries without the express prior written consent of the GoM.”*

376. Huwa jinsisti illi, la darba l-hekk imsejha *“Completion Date”* qatt ma seħhet attwalment minhabba f'inadempjenza tas-soċjeta' Vitals, għaldaqstant, it-trasferiment tas-sehem tal-kumpannija li bbenefika mill-konċessjoni emfitewtika, ossija Vitals Global Healthcare Assets Limited lil Steward qatt ma kellha ssir, bir-riżultat illi t-trasferiment li seħħ huwa null u rexindibbli.

377. Il-Qorti qieset bir-reqqa id-dokumentazzjoni kollha eżebita quddiemha u tosserva s-segwenti:

- is-soċjeta' Vitals Global Healthcare Assets Limited, li illum tissejjah Steward Malta Assets Limited, għandha bħala azzjonista unika tagħha is-soċjeta' Vitals Global Healthcare Limited, liema soċjeta' illum tissejjaħ Steward Malta Limited.
- Is-soċjeta' Vitals Global Healthcare Limited, meta ġiet iffurmata fit-13 ta' Mejju 2015, kellha bħala azzjonista unika tagħha lis-soċjeta' Bluestone Investments Malta Limited.
- Fid-19 ta' Frar 2018, il-Malta Business Registry ġiet mgħarrfa, permezz ta' Dokument Form T lilha pprezentata (fol 658), li fis-**16 ta' Frar 2018**, 1,140 sehem illi hija kellha fis-soċjeta' Vitals Global Healthcare Limited ġew trasferiti lis-soċjeta' Steward Healthcare International Limited filwaqt illi 60 sehem illi kellha fl-istess soċjeta' Vitals Global Healthcare Limited ġew traferiti lil Ashok Rattehalli.

- Jirriżulta, għalhekk, illi fis-16 ta' Frar 2018, ossija anqas minn sentejn wara l-iffirmar tal-konċessjoni emfitewtika, l-ishma tas-soċjeta' Vitals Global Healthcare Assets Limited ġew trasferiti lill-terzi.
- Jirriżulta illi, a tenur tal-ftehim fuq imsemmi, ossija *Services Concession Agreement*, ebda trasferiment ta' ishma, f'kwalsiasi mod, ma seta' jsir mingħajr il-permess bil-miktub tal-Gvern.
- Fid-dokumentazzjoni voluminuża pprezentata lil dina l-Qorti waqt il-mori tal-kawża, imkien ma jidher illi kien hemm il-kunsens espress bil-miktub tal-Gvern ta' Malta, għal tali trasferiment, w is-soċjeta' Steward ma ressqet ebda dokumentazzjoni in sostenn mal-asserzjoni tagħha li kellhom l-approvazzjoni tal-Gvern.

378. Il-Qorti tosserva illi huwa ċar li t-trasferiment b'titolu ta' enfitewsi temporanju illi sar lis-soċjeta' Vitals Global Healthcare Assets Limited sar abbażi ta' dak il-provdut fl-Artikolu 31 (g) (C) (i) (b) li jipprovdi li art tista' tiġi trasferita:

*jekk tikkonsisti f'art li tiġi mogħtija għall-proġett industrijali wara li l-applikant ikun issodisfa lill-awtorità kompetenti dwar il-benefiċċju li l-proġett jagħti lill-ekonomija tal-pajjiż u li n-numru ta' impiegi li joħloq huwa adegwat;*

379. Il-Qorti tosserva wkoll illi, mkien fil-Kap 573, ma' l-azzjoni li Membru tal-Kamra tar-Rappreżentanti għandu jew għandha a tenur tal-Artikolu 33, ma hija soġġetta għal xi perjodu ta' preskrizzjoni sa meta tali azzjoni tista' ssir, u għalhekk, tali talba tista' ssir fi kwalsiasi hin, anke wara illi jkun laħaq sar u ġie effettwat it-trasferiment.

380. Kif ben osserva l-Avukat Ġenerali, iżda, li jrid jiġi stabbilit huwa jekk it-trasferiment illi kien seħħ kienx attwalment bi ksur tal-Artikolu 31 jew le. Tali argument, madanakollu, jippresumi bħala punt ta' tluq, li r-rikorrent, bħala Membru tal-Kamra tar-Rappreżentanti, għandu dritt illi jitlob ir-reviżjoni ta' kuntratt, dritt illi jidher li l-intimati kollha, mill-banda l-oħra, qed jikkontendu li r-rikorrent ma għandux.

**381. Il-Qorti, wara li qieset l-argumentazzjoni kollha miġjuba quddiemha mill-intimati, tirrileva illi huwa dmir ta' membru tal-Kamra tad-Deputati illi jipproteġi l-interessi taċ-ċittadin li jkun elegġieħ sabiex jirrappreżentaħ, u jassikura ruħu li propjetajiet tal-Gvern jinghataw lill-terzi in ottemperanza ta' dak indikat fil-Liġi u fl-aħjar interess taċ-ċittadin.**

**382. Daqstant huwa dmir ta' partijiet f'kuntratt li jkunu deħru għall-Gvern jew xi entita' tiegħu fi trasferiment ta' propjeta' tal-poplu, kif ukoll l-Avukat Ġenerali, li jassikura li dik il-parti li tkun inghatat propjeta' tal-Gvern u li tkun obligat ruħha illi tagħmel xi haġa in ritorn, attwalment mhux tgħidu biss bil-kliem, iżda tagħmlu bil-fatti wkoll.**

383. Tali obbligi ghandhom dejjem jitqiesu bhala parti essenzjali tat-trasferiment minnu nniffsu, w ma jispiċċawx dakinhar li jsehħ it-trasferiment, iżda jibqghu viġenti tul l-eżistenza kollha tal-konċessjoni illi tkun inghatat, bir-rizultat illi huma ghandhom dejjem ikunu soġġetti għall-iskrutinju tal-partijiet fil-ftehim.
384. Għaldaqstant, la darba l-obbligi assunti ghandhom jitqiesu bhala parti intrinsika mit-trasferiment li jkun sar, dak ifisser illi ksur ta' tali obbligi ghandu jwassal għal azzjoni korrettiva, jew mhux rexxisorja, liema rikjesta tista' ssir fi kwalsiasi stadju, u mhux biss dakinhar li jkun sehħ it-trasferiment.
385. Tenut kont ta' dan kollu, il-Qorti tqis illi r-rikorrent, bhala Membru tal-Kamra tad-Deputati, a tenur tal-Artikolu 33, kellu kull dritt, jekk mhux dover, illi jintervjeni u jniedi l-proċeduri fil-każ odjern, u dan in vista tan-nuqqas da' parte tal-partijiet fil-kuntratt w/jew l-Avukat Ġenerali li jagħmlu dan, sabiex jitlob ir-rexissjoni tat-trasferiment b'titolu ta' emfitewsi tempranja lis-soċjeta' Vitals, illum Steward w tal-kuntratti miegħu marbutin .
386. Għaldaqstant, l-eċċezzjonijiet ta' l-intimati fejn jingħad li r-rikorrent ma kellux interess legittimu sabiex jagħmel l-azzjoni odjerna, ma jimmeritawx illi jiġu akkolti.

**D. Li r-rikorrent ma kienx parti fil-kuntratt li qed jiġi attakkat, u għalhekk ma għandux interess ġuridiku jattakkah, u dana abbażi tal-prinċipju “Res inter alios acta”.**

387. Eċċezzjoni oħra imqajjma mill-intimati, partikolarment is-soċjeta' Steward u l-INDIS Limited, kienet illi r-rikorrent ma kienx parti fil-kuntratt tat-22 ta' Marzu 2016, u għalhekk ma għandu ebda *locus standi* fil-kawża odjerna u ma għandu ebda dritt li jitlob it-tħassir tal-kuntratt.
388. L-abbli difensur tas-soċjeta' Steward, in sostenn ma' tali argumentazzjoni, jagħmel referenza għall-Artikolu 992, 999 u 1001 tal-Kap 16, li jipprovdu dan li ġej:

*992. (1) Il-kuntratti magħmula skont il-liġi ghandhom saħħa ta' liġi għal dawk li jkunu għamluhom.*

*(2) Dawn il-kuntratti ma jistgħux jiġu mhassra hlief bil-kunsens ta' xulxin tal-partijiet, jew għal raġunijiet magħrufin mil-liġi.*

...

*999.(1) Hadd ma jista' b'kuntratt f'ismu jobbliga ruħu jew jikkuntratta hlief għalih innifsu.*

...

*1001. Il-kuntratti għandhom effett bejn il-partijiet li jikkuntrattaw biss, u ma jistgħux ikunu ta' hsara jew ta' ġid għal haddieħor, hliet fil-każijiet li tgħid il-liġi.*

389. Il-Qorti, madanakollu, tosserva illi, fil-każ odjern, teżisti ċirkostanza, kif pprovduta wara kollox fl-Artikolu 992 (2) tal-Kap 16 fuq kwotat, ossija dik indikata bhala “*jew għal raġunijiet magħrufin fil-liġi*”, fejn persuna mhux parti mill-kuntratt jista' jitlob ir-rexissjoni tagħha – u każ magħruf fil-liġi huwa dak ta' membru tal-Kamra tad-Deputati fil-każ ta' trasferiment, bi kwalsiasi titolu, ta' art tal-Gvern, ossija taċ-ċittadini Maltin u Għawdxin.

**390. Għalhekk, a differenza ta' dak indikat mis-soċjeta' Steward, ir-rikorrent, bhala membru tal-Kamra tad-Deputati elett sabiex jirrappreżenta l-interessi taċ-ċittadin, għandu kull dritt illi jintrometti ruħu f'kuntratti, partikolarment bhal dik fil-każ odjern, fejn propjeta' pubblika tkun tinghata lill-terzi a skop ta' lukru, u dan sabiex jassikura li l-obbligi assunti a favur tal-Gvern jiġu onorati u, f'każ illi dana ma huwiex il-każ, jitlob ir-rexissjoni tal-kuntratt.**

**391. Huwa ċar li, bhal fil-każ odjern, meta propjeta' tal-Gvern, u allura taċ-ċittadin, tinghata lil terzi a tenur tal-Artikolu 31 tal-Kap 573, membru tal-Kamra tad-Deputati, bhala rappreżentant taċ-ċittadin, u għalhekk għan-nom taċ-ċittadin illi lilu tkun ittiehdet propjeta' u tkun ġiet mogħtija lill-terzi presumibbilment għall-benefiċċju taċ-ċittadin, għandu kull dritt li jitlob ir-rexissjoni ta' kuntratt mogħti bis-saħha ta' tali leġislazzjoni, f'każ illi jkun hemm ksur.**

392. Il-Qorti hawnhekk tosserva illi, fil-każ odjern, għandna propjeta' li hija tal-Gvern, u li tipprovdi servizz essenzjali lill-pajjiż, ossija dik tas-Saħha, li hija ta' interess Nazzjonali, u għaldaqstant, il-Qorti tippretendi li ċertament tali trasferimenti għandhom dejjem ikunu taħt l-iskrutinju ta' kull rappreżentant elett mill-poplu biex jirrappreżentahom, liema rappreżentant għandu d-dmir lejn iċ-ċittadin sabiex jassikura li dak mogħti lill-terzi, fil-każ odjern ċarament a skop ta' lukru, jsir minnu skond kif miftiehem.

393. Għaldaqstant, tali linja difensjonali ma titqiesx illi tista' tiġi aċċetata minn dina l-Qorti u għalhekk tali argumentazzjoni qed tiġi miċhuda.

**E. Li l-intimati ma humiex il-leġittimu kontradittur fil-kawża odjerna**

394. L-intimati kollha, għajr għas-soċjeta' Vitals illum Steward, qajjmu l-eċċezzjoni illi huma ma humiex il-leġittimu kontradittur u għalhekk għandhom jiġu liberati mill-osservanza tal-ġudizzju.

395. Il-Prim Ministru u l-Avukat Ġenerali saħqu li kien jidher ċar il-kuntratt ta' emfitewżi temporanja ġie iffirmit mis-soċjeta Malta Industrial Parks Limited, u għalhekk ebda minnhom ma kellhom ebda involviment fiġ.



396. L-istess Prim Ministru u Avukat Ġenerali saħqu illi għal dak li jirrigwarda l-hekk imsejjha ‘*Related Instruments*’, ossija Services Concession Agreement, Health Services Delivery Agreement u Labour Supply Agreement, għalihom deher dejjem il-Ministeru għall-Energija, Saħħa u Proġetti ta’ dak iż-żmien, Dr Konrad Mizzi, minkejja li kkonċedu illi dana deher għan-nom tal-“*Gvern tar-Repubblika ta’ Malta*”.
397. L-Kap Eżekuttiv tal-Awtorita’ tal-Artijiet u ċ-Chairman tal-Bord tal-Gvernaturi tal-Awtorita’ tal-Artijiet, da parte tagħhom, saħqu illi, permezz ta’ Avviż Legali 94 tas-sena 2016 u 95 tas-sena 2016, id-drittijiet u obbligi kollha li kellu l-Kummissarju tal-Artijiet ġew mgħoddija lil Malta Industrial Parks Limited, u għalhekk huma ma kellhom ebda involviment fil-kuntratt meritu tal-kawża odjerna.
398. Finalment, l-INDIS Malta Limited, ġia Malta Industrial Parks Limited, tikkontendi illi hija ma tgawdi minn ebda funzjoni pubblika u għalhekk għandha tiġi liberata mill-osservanza tal-ġudizzju.
- 399. Il-Qorti, hawnhekk a tistax ma tosservax is-sorpriza tagħha lejn tali difiżi mqajjma mill-partijiet, daqslikieku l-intimati li qajjmu tali eċċezzjoni jixtiequ, lkoll kemm huma, jaharbu mir-responsabbiltajiet tagħhom u jiddissassoċjaw ruhhom b’kull mezz possibbli mill-kwistjoni li tinstab quddiem dina l-Qorti, ossija l-ghoti ta’ tlett sptarijiet f’Malta u Ghawdex lis-soċjeta’ Vitals illum Steward.**
400. Ikkunsidrat dan, il-Qorti tirrileva li, l-ewwel u qabel kollox, illi fil-kuntratt tat-22 ta’ Marzu 2016 fejn ingħataw l-Isptar ta’ San Luqa, l-Isptar ta’ Riabilitazzjoni Karin Grech u l-Isptar t’Għawdex, dehru fuq r-rappreżentanti tal-Malta Industrial Park Limited, ossija Mario Galea u l-Kummissarju tal-Artijiet, Mr Peter Mamo.
401. Ladarba l-meritu tal-kawża odjerna huwa proprju t-thassir ta’ tali kuntratt, kif ukoll l-hekk imsejjha “*Related Instruments*”, din il-Qorti tistqarr illi hija kemmxejn perplessa kif dawna jistgħu jgħidu li ma kellhomx jkunu parti minn tali proċeduri.
- 402. Huwa ovvju li kemm is-soċjeta’ INDIS Malta Limited, ġia Malta Industrial Parks Limited, kif ukoll l-Kap Eżekuttiv tal-Awtorita’ tal-Artijiet u ċ-Chairman tal-Bord tal-Gvernaturi tal-Awtorita’ tal-Artijiet, kellhom jissejjhu fil-kawża odjerna, u huwa daqstant loġika, iżda mhux neċessarjament ovvja għal uhud, li għalhekk tali linja difensjonali ma kellha qatt titqajjem minnhom.**
403. Għalhekk, ma għandu jkun hemm ebda dubju illi kemm is-soċjeta’ INDIS Malta Limited, ġia Malta Industrial Parks Limited, kif ukoll l-Kap Eżekuttiv tal-Awtorita’ tal-Artijiet u ċ-Chairman tal-Bord tal-Gvernaturi tal-Awtorita’ tal-Artijiet, kellhom jissejjhu fil-kawża odjerna.
404. Għal dak illi għandu jirrigwarda l-Prim Ministru, huwa ċar illi, fil-kuntratti minnu stess citati, ossija it-tlett “*Related Instruments*”, il-Ministeru għall-Energija, Saħħa u Proġetti ta’ dak iż-żmien, Dr Konrad Mizzi, ma kienx qiegħed jidher għan-nom tal-

Ministeru li tiegħu huwa kien Ministru, kif del resto saħaq kull meta xehed quddiem dina l-Qorti, iżda kien qiegħed jidher għan-nom tal-“**Gvern tar-Repubblika ta’ Malta**”, kif deskritt fil-ftehim innifsu.

**405. Għalhekk, ladarba huwa ċar li l-kuntratti saru mill-Gvern tar-Repubblika ta’ Malta, ma għandu jkun jkun hadd aktar mill-Prim Ministru li jirrappreżenta lill-Gvern ta’ Malta fil-proċeduri odjerni.**

406. Fl-aħħar nett, għal dak illi jirrigwarda l-Avukat Ġenerali, filwaqt illi huwa minnu li, fil-każ odjern, la darba qiegħed jissejjaħ in ġudizzju l-Prim Ministru ma kellux jissejjaħ in ġudizzju fil-każ odjern, il-Qorti tirrileva li, kif ben indikat fir-rikors promotur, l-Avukat Ġenerali qed jissejjaħ fil-kawża odjerna abbażi ta’ l-obbligu li l-istess Avukat Ġenerali kellu a tenur tal-Artikolu 33 tal-Kap 573, illi jitlob ir-rexissjoni tal-kuntratt, liema obbligu r-rikorrent qiegħed jikkontendi illi l-Avukat Ġenerali ma osservax.

407. Għalhekk, il-Qorti ssib illi l-partijiet kollha li ssejjħu fil-kawża mir-rikorrent, inkluż is-soċjeta’ Steward li, del resto ma qajjmitx difiża f’tali sens, huma legittimi kontraditturi fil-proċeduri odjerni u għalhekk l-eċċezzjonijiet tagħhom biex jiġu liberati mill-osservanza tal-ġudizzju ma jimmeritawx illi jintlaqgħu.

#### **F. Li ma kienx hemm ksur tal-Kundizzjonijiet**

408. Il-Qorti tibda billi tirrileva illi dina l-kwistjoni hija l-qofol tal-azzjoni kollha odjerna, kif redatta mir-rikorrent fir-rikors promotur – jekk kienx hemm ksur tal-Konċessjoni Emfitewtika mogħtija lis-soċjeta’ Vitals Global Health Assets Limited.

#### ***Hsieb wara l-ghoti tal-Konċessjoni Emfitewtika***

409. Jibda biex jingħad illi ġia gie stabbilit illi l-konċessjoni emfitewtika temporanja mogħtija permezz ta’ Kuntratt datat 22 ta’ Marzu 2016, fl-atti tan-Nutar Thomas Vella, għandha titqies bħala parti instrinsika minn serje ta’ konċessjonijiet varji li ngħataw lis-soċjeta’ Vitals, illum, Steward, u li kellhom bħala għan Ewlieni dak deskritt fis-Services Concession Agreement iffirmat fit-30 ta’ Novembru 2015, ossija:

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

410. Ma jista’ jkun hemm ebda dubju li l-Konċessjoni Emfitewtika setgħet kienet viabbli u eżistenti **BISS** rizultat tat-tlett ‘Agreements’ illi saru qabel l-iffirmat tiegħu, ossija is-Services Concession Agreement, il-Health Services Delivery Agreement u l-Labour Supply Agreement.

411. Din il-Qorti ma għandha assolutament ebda dubju li, mingħajr l-eżistenza ta’ tali tlett ftehim, il-Gvern ta’ Malta **QATT** ma kien jidhol f’konċessjoni emfitewtika bħal dik

fejn, in essenza, il-propjeta' ta' tlett Sptarijiet Ewlenin ġewwa Malta, bħalma huma dawk ta' St Luke's, Karin Grech u Għawdex, ingħaddiet b'mod kważi assolut lis-soċjeta' Vitals, illum Steward, bir-riżultat li s-soċjeta' Vitals Global Healthcare Assets Limited, li sussegwentement bdew jissejju Steward Malta Assets Limited, setgħu jiddisponu minnhom kif jidhrilhom opportun.

412. Tinsab ċert ukoll illi l-intenzjoni tal-Gvern ta' Malta ma kinetx biex tgħaddi tali propjetajiet lis-soċjeta' Vitals, illum Steward, sabiex dawna jagħmlu żvilupp ekonomiku a benefiċċju ta' l-istess Vitals, illum Steward, liema ħsieb, mill-banda l-oħra, jidher li seta' kien dak ta' l-azzjonisti ta' dak iż-żmien tas-soċjeta' Vitals meta ressqu l-interess tagħhom għall-proġett, iżda l-ħsieb tal-Gvern kien illi dawna qegħdin jingħatawllhom unikament sabiex l-istess soċjeta' Vitals, illum Steward, jkunu jistgħu jimplementaw dak minnhom imwiegħed fit-tlett Agreements illi kienu saru preċedentement għall-iffirmar tal-Konċessjoni Emfitewtika.
413. Dan huwa ukoll rifless fid-dicitura tal-Konċessjoni Emfitewtika innifisha, fejn jingħad dan li ġej:

*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 ate 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. Jirriżulta wkoll illi s-soċjeta' Vitals Global Healthcare Assets Limited kienet obligat ruħha għas-segwent:

*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. Fid-definizzjonijiet stabbiliti fi klawnsola 1.1, “**Development Obligations**” ġew definiti kif ġej:

*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. Dwar “**Concessionaire**”, l-istess definizzjonijiet jindikawhom bħala s-soċjeta' intimati Vitals Global Healthcare Management Limited u Vitals Global Healthcare Limited.

417. Għalhekk, ma għandu jkun hemm ebda dubju li, f'każ illi hemm ksur ta' xi waħda mill-Agreements fuq imsemmija, dak ikun ifisser ukoll illi hemm ksur ukoll fil-

Konċessjoni Emfitewtika, li għandha l-eżistenza tagħha intrinsikament konnessa ma' tali Agreement, u vice-versa.

### **Concession Milestones**

418. Jirrizulta illi fis-Sitt Skeda fi hdan is-*Services Concession Agreement*, intitolata “**Concession Milestones**”, illi kienu ġew deliberatament moħbija meta tali kuntratti ġew ippreżentati lill-Kamra tad-Deputati fid-19 ta' Ottubru 2016, hemm indikat is-segwenti obbligi assunti mit-tlett soċjetajiet Vitals, illum Steward, u dawna kienu li ġej: (fol 1945)

#### *Completion 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. Jirrizulta ċar, mill-assjem tal-provi kif riprodotti aktar ‘il fuq, illi ebda minn dawna l-“Completion Milestones” ma ġew osservati mis-soċjetajiet Vitals, illum Steward.**

420. Jirrizulta, madanakollu, illi l-introduzzjoni tal-‘*Completion Milestones*’ fil-ftehim fuq imsemmi kien soġġett għall-kundizzjoni li, kif sussegwentement emendati fit-30 ta' Ġunju 2017, spicċaw rendewhom virtwalment ineffettivi, jekk mhux daħqa fil-wieċ.

421. Jirrizulta, di fatti, li fil-ftehim oriġinali, fi klawnsola 16.1.2, din ukoll moħbija mill-Kamra tad-Deputati, hemm pprovdut li:

*The Concession Milestones shall be subject to the licences, the Other Licenses 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 Licenses 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. Tali dritt, madanakollu, ma kienx suffiċjenti għas-soċjeta' Vitals, illum Steward, u minkejja li ġie ammess u aċċettat minn kullhadd, salv l-intimati Steward, illi l-milestones fuq imsemmija ma ġewx onorati fiż-żmien originalment stabbilit, il-Gvern ta' Malta, hekk kif deher ċar li s-soċjeta' Vitals kienet qiegħda tikser l-ftehim, flok ma għadda biex iħassar il-ftehim fuq nuqqas ta' adempjiment tal-obbligi kuntrattwali assunti mis-soċjeta' Vitals u għalhekk jieħu lura pussess tal-propjetajiet sabiex jiżviluppa l-istess b'mod ieħor, **fit-30 ta' Ġunju 2017**, inkredibbilment issokkomba u aċċetta tibdil fil-ftehim illi issa kien jipprovdi dan li ġej:

*“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. Jiġifieri, permezz ta' tali ftehim, il-Gvern ikkonċeda lis-soċjetajiet Vitals tlett snin oħra, li kienu imbagħad AWTOMATIKAMENT estendibbli għal sena u nofs oħra, jiġifieri erbgha snin u nofs b'kollox, ossija sa l-aħħar tas-sena 2022, sabiex jagħmlu x-xogholijiet li kellhom jagħmlu.**

424. Jidher, madanakollu, illi anke tali estensjoni ma kienetx suffiċjenti għal Steward biex jagħmlu dak li kellhom jagħmlu!

425. Filwaqt li l-Qorti tifhem illi tali estenzjonijiet ma ġewx onorati mis-soċjeta' Vitals kif ukoll Steward, peress illi issa ninsabu fis-sena 2023 u ħafna mix-xogholijiet li kellhom isiru, għadhom ma sarux, il-Qorti tistqarr illi hija tassew imħassba mid-deċiżjoni meħuda minn rappreżentanti tal-Gvern ta' Malta fit-30 ta' Ġunju 2017. Il-kosternazzjoni u tħassib ta' dina l-Qorti hija dovuta għal fatt illi, filwaqt li f'dak iż-żmien, il-Ministru tas-Saħħa Mr Chris Fearne kien qiegħed jesprimi d-disappunt tiegħu għan-nuqqasijiet serji fl-adempjiment tal-obbligi kuntrattwali tas-soċjeta' Vitals, kif del resto l-istess Mr Fearne stqarr quddiem dina l-Qorti bil-ġurament, Dr Konrad Mizzi, li mill-banda l-oħra, minkejja li ma kienx għadu Ministru tas-Saħħa, għal raġunijiet burokratiċi u oħrajn li ċertament ma għandhom ebda loġika u trasparenza u hadd ma ta' spjegazzjoni loġika għaliha, huwa kien għadu firmatarju għall-Gvern mas-soċjetajiet Vitals, ikkonċeda lis-soċjetajiet Vitals tlett snin oħra, AWTOMATIKAMENT estentibbli għal sena u nofs oħra, jiġifieri **erbgha snin u nofs** b'kollox, ossija sa l-aħħar tas-sena 2022, biex jagħmlu dak illi huma kienu obligaw ruħhom li jagħmlu li kellhom jagħmlu sa mhux aktar minn l-aħħar ta' Settembru 2018.

426. Din il-Qorti tirrileva li, għalkemm inizjalment Dr Konrad Mizzi għażel illi jixhed u jispjega l-fatti kif seħħew skond hu, fi stadju ulterjuri, hekk kif ħarġu dawn il-fatti fuq imsemmija quddiem dina l-Qorti, għażel li ma jixhidx aktar, u għalhekk ma offra ebda spjegazzjoni għal tali deċiżjoni li ċertament timmerita li tigi ġustifikata b'xi mod.

427. Din il-Qorti tirrileva wkoll illi l-għażla ta' Dr Konrad Mizzi li ma jixhidx seħħet wara li huwa kien irriżenja minn Ministru tal-Gvern fis-26 ta' Novembru 2019, liema riżenja, fi kliem Mr Fearne, seħħet dahinkar illi fil-Kabinett kien ser jiġi diskuss ilment ufficjali li l-istess Mr Fearne kien għamel kontra l-istess Dr Mizzi dwar deċiżjonijiet u ftehim magħmula minn Dr Mizzi minn wara dahar Dr Fearne, liema deċiżjonijiet u ftehim kienu qed jiġu konklużi minkejja l-oġġezzjonijiet u t-tħassib serju tiegħu.
428. Il-Qorti tifhem illi tali ftehim tat-30 ta' Ġunju 2017, bħal ftehim oħrajn li din il-Qorti jkollha l-opportunita' ssemmi aktar 'il quddiem, ma jagħmlu ebda sens loġiku u jsaħħu bi kbir l-argumentazzjoni u tħassib serju espress mill-Awditur Ġenerali fir-rapporti minnu redatti f'Lulju 2020 u Dicembru 2021 dwar ir-raġġiri u manuvri li seħħew qabel l-għoti tal-kuntratt inizjalment lis-soċjeta' Vitals, liema tħassib dina l-Qorti kellha l-opportunita' illi ġia tirreferi għalihom fis-sentenza odjerna aktar 'il fuq, u li hija stess tabbraċċja u tagħmel bħala tagħha, kif ser jingħad aktar 'il quddiem.

### ***Xogholijiet illi għamlu is-soċjeta' Vitals u sussegwentement is-soċjeta' Steward***

429. Il-Qorti tosserva illi fil-proċeduri odjerni, r-rikorrent qiegħed jishaq li l-konċessjoni emfitewtika mogħtija lis-soċjeta Vitals Global Healthcare Assets Limited kif ukoll il-kuntratti relattivi ffirmati u indikati bħala '*Related Instruments*' għandhom jiġu annullati u rexissi peress illi l-'*completion milestones*' stabbiliti fil-ftehim originali ma' ġewx onorati mis-soċjeta' Vitals Global Healthcare Assets Limited, kemm meta kienet propjeta' tas-soċjeta' Bluestone Investments Malta Limited, kif ukoll meta eventwalment saret propjeta' tas-soċjeta' Steward Malta Investments Limited.
430. Għal dan il-għan, ir-rikorrent tella varji xhieda sabiex jikkonfermaw illi x-xogħol li wegħdu li ser jagħmlu s-soċjeta' Vitals, attwalment ma kienx sar, fejn xehdu nies bħal Dr Martin Balzan, President tal-Medical Association of Malta, li stqarr illi minn dak li kien imwiegħed minn Vitals, ma kien sar kważi xejn, filwaqt illi l-Gvern baqa' jhallas ferm aktar minn dovut lill-istess soċjeta' Vitals, illum Steward, mingħajr ma jingħata dak lillu dovut.
431. L-istess Ministru tas-Saħħa, Mr Chris Fearne, stqarr illi kien biss wara l-involvement personali tiegħu fil-kwistjoni ġenerali, liema involvement preċedentement kien prekluz milli jagħmel in vista tal-involvement esklussiv ta' Dr Konrad Mizzi, li xi affarjiet bdew isiru ġewwa l-Isptar t'Għawdex, fejn l-Iskola Medika, li kellha tinfetaħ sal-1 ta' Lulju 2017 attwalment kienet infetħet erbgħa snin wara, ossija f'it qabel ma xehed quddiem dina l-Qorti fl-1 ta' Marzu 2021. Aċċetta wkoll illi, madanakollu, fejn jirrigwarda l-Isptar ta' San Luqa u l-Isptar ta' Riabilitazzjoni Karin Grech, ħafna mix-xogħol u servizzi illi kienu ġew imwiegħda kienu għadhom ma seħħewx.
432. Saħansitra l-intimat Dr Joseph Muscat stess ikkonċeda illi mhux dak kollu li kien imwiegħed attwalment kien sar.
433. Kien għalhekk illi din l-Qorti kienet tistenna, mingħand is-soċjeta' Steward, illi tressaq quddiem dina l-Qorti provi dettaljati u skjaċċanti biex juru illi sar l-investment kollu

illi kienet intrabtet illi tagħmel, u dana anke in linja ma' asserzjonijiet minnha magħmula li kienet għamlet b'madwar sittin miljun euro (€60,000,000) f'xogholijiet u investimenti, li sar in ottemperanza ma' dak miftiehem minnha u mill-preċedessuri tagħha mal-Gvern ta' Malta, u għalhekk l-obbligi tagħha kienu kollha onorati minnha.

434. Madanakollu, b'sorpriza kbira għal dina l-Qorti, l-unika prova illi ressqu s-soċjeta' Steward quddiem dina l-Qorti kienet affidavit ta' paġna tal-Engineer James Grima, Director of Facilities Management fi ħdan it-tlett sptarijiet operati minn Steward, ma' liema affidavit eżebixxa sitta u sebgħin paġna b'ritratti ta' proġetti allegatament minnhom magħmula in ottemperanza ma' dak minnhom obligat li jagħmlu.
435. Tali rapport fotografiku jibda minn ritratti ta' helicopter ġdid illi allegatament inxtara fis-sena 2016, sa refurbishment tal-kamra tal-banju tat-Telephone Operator fi ħdan l-Isptar ta' Għawdex, bid-dettalji taċ-ċeramika kollha minnhom installati.
436. Ebda indikazzjoni ma ngħatat dwar spejjeż minnhom inkorsi sa issa, u, aktar u aktar, ebda indikazzjoni ma ngħatat dwar xi proġetti u xogholijiet oħra li huma ppjanati sabiex isiru biex dak li huma obligati jagħmlu, u li għadhom ma għamlux sa issa, attwalment isir.
- 437. Din il-Qorti tistqarr illi hija tassew perplessa bil-faqar tal-provi illi s-soċjeta' Steward ressqu quddiem dina l-Qorti, liema faqar probabbilment jirrifletti l-faqar ta' investment, proġetti u ippjanar fil-futur illi l-istess Steward għandha ppjanat.**
438. Din il-Qorti tosserva illi, skond il-ftehim oriġinali, qabel ma gie mibdul bi ftehim varji li għalihom issokkomba il-Ministru ta' dak iż-żmien Dr Konrad Mizzi, sa Jannar ta' sitt snin ilu, jiġifieri tas-sena 2017, ġewwa l-Isptar San Luqa u l-Isptar ta' Riabilitazzjoni Karin Grech, kellhom jizdiedu ħamsin (50) sodda oħra għall-pazjenti – **ma ngiebet ebda prova da' parte tas-soċjeta' Steward illi tali sodod ġodda ġew introdotti, u għalhekk il-Qorti tifhem illi tali sodod għadhom ma ġewx introdotti sal-ġurnata ta' llum.**
439. Din il-Qorti tosserva illi, skond il-ftehim oriġinali, sa l-aħħar ta' Settembru ta' sitt snin ilu, jiġifieri tas-sena 2017, ġewwa l-Isptar San Luqa, kellhom jizdiedu tmenin (80) sodda ta' riabilitazzjoni oħra għall-pazjenti – **ma ngiebet ebda prova da' parte tas-soċjeta' Steward illi tali sodod ġodda ġew introdotti, u għalhekk il-Qorti tifhem illi tali sodod għadhom ma ġewx introdotti sal-ġurnata ta' llum.**
440. Din il-Qorti tosserva illi, skond il-ftehim oriġinali, sa l-aħħar ta' Mejju ta' ħames snin ilu, jiġifieri tas-sena 2018, ġewwa l-Isptar ta' Għawdex kellu jinbena bini ġdid ġewwa l-istess Sptar. Filwaqt illi jidher illi saru xi xogholijiet ġewwa l-Isptar t'Għawdex, din il-Qorti ma għandha ebda indikazzjoni illi x-xogholijiet illi oriġinalment kienet obligat ruħha li tagħmel is-soċjeta' Vitals, illum Steward, attwalment kollha saru, u għalhekk **il-Qorti tifhem illi x-xoghol ta' bini ġdid ġewwa l-Isptar ta' Għawdex għadu ma tlestiex sal-ġurnata ta' llum.**



441. Din il-Qorti tosserva illi, skond il-ftehim oriġinali, sa l-aħħar ta' Settembru ta' hames snin ilu, jiġifieri tas-sena 2018, ġewwa l-Isptar ta' Għawdex kellu jitlesta r-renovazzjoni kollu ġewwa l-istess Sptar. **Għal darba ohra, filwaqt illi jidher illi saru xi xogholijiet ta' rinovazzjoni ġewwa l-Isptar t'Għawdex, inkluż fit-toilets tat-Telephone Operator, din il-Qorti ma għandha ebda indikazzjoni illi r-renovazzjoni kollha illi oriġinalment kienet obligat ruhha li tagħmel is-soċjeta' Vitals, illum Steward, attwalment saru, u għalhekk il-Qorti tifhem illi x-xoghol ta' renovazzjoni ġewwa l-Isptar ta' Għawdex għadu ma tlestiex sal-ġurnata ta' illum.**
442. Din il-Qorti tosserva, finalment, illi, skond il-ftehim oriġinali, sa l-aħħar ta' Dicembru ta' hames snin ilu, jiġifieri tas-sena 2018, ġewwa l-Isptar ta' San Luqa kellu jitlesta l-proġett ta' implimentazzjoni ta' hekk imsejja "Tourism Beds" ġewwa l-istess Sptar. Tul il-provi kollha pprezentati, irriżulta ċar li tali proġett **qatt ma beda jiġi kkunsidrat** u qatt ma sar xejn dwaru, la mis-soċjetajiet Vitals, meta kienu propjeta' ta' Bluestone, u wisq anqas meta saru propjeta' ta' Steward. Deher ukoll car illi tali proġett kien gie totalment "*shelved*", tant illi s-soċjeta' Steward ma ressqet ebda tip ta' prova in sostenn dwar jekk attwalment tali proġett ta' "*Tourism Beds*" attwalment ġiex implimentat jew jekk qiegħed jiġi implimentat jew, addirittura, jekk hemmx il-ħsieb illi jiġi implimentat. **Għalhekk il-Qorti tifhem illi tali "Milestone" ma hija ser tiġi milhuqa QATT.**
443. In-nuqqas lampanti tas-soċjetajiet Steward illi jipprovaw jiġġustifikaw l-posizzjoni tagħhom u jiddefendu l-insistenza tagħhom illi ma kien hemm ebda ksur da' parte tagħhom għal dak minnhom obligat li jagħmlu, jwassal lill-Qorti sabiex tiddubita bi kbir il-*buona fede* tas-soċjeta' Steward illi tonora l-ftehim u l-obbligi fuqha imposti u minnha assunti liberament fil-mument illi akkwistat l-iżma tas-soċjetajiet Vitals fis-16 ta' Frar 2018, kif ukoll tqajjem dubji serji dwar l-onesta w il-*buona fede* ta' l-istess Steward meta dawna għamlu l-ftehim tas-27 ta' Awissu 2019 fejn obligat il-Gvern illi jhallasha penali ta' mitt miljun Euro (€100,000,000) f'każ illi dina l-Qorti, kif komposta, tiddikjara il-kuntratti li kienu ingħataw lis-soċjeta' Vitals, u li hija naqset milli tonora, bħala nulli.
444. Tali dubju, din il-Qorti tosserva, kellu jitqajjem ukoll minn kull min kien involut sabiex iħares id-drittijiet tal-Gvern ta' Malta u li kien oriġinalment imdaħħal f'tali ftehim, u dana jinkludi wkoll lill-Dr Konrad Mizzi, kemm sa meta kien Ministru tal-Energija, Saħħa u Progetti meta ġew iffirmati l-ftehim oriġinali, u aktar u aktar meta, minkejja li ma kienx għadu Ministru tas-Saħħa, **iffirma varji ftehim oħrajn li emendaw l-ftehim oriġinali, u xjentement irrevoka u naqqas drittijiet illi kellu l-Gvern, liema tibdiliet saru biss a benefiċċju tas-soċjeta' Vitals kif ukoll Steward, u ċertament mhux a benefiċċju tal-Gvern u ċ-ċittadin li kellu, finalment, jibbenefika mill-proġetti fdati lis-soċjeta' Steward u li ma ġewx minnhom espletati.**

445. Tali dubji u tħassib da' parte ta' dina l-Qorti jwassluwha sabiex tqis u tikkunsidra l-aħħar argumentazzjoni mqajjma mir-rikorrent, ossija '*fraus omnia corrumpit*'.

### ***Fraus Omnia Corrumpit***

446. Il-Qorti tirrileva, l-ewwel u qabel kollox, li l-intimati, fis-sottomissjonijiet tagħhom, jikkontendu illi tali argumentazzjoni u rikjesta saret unikament fis-sottomissjonijiet tar-rikorrent u ma hijiex kkunsidrata fir-rikors promotur tar-rikorrenti, u għalhekk, la darba mhux imsemmija espressament fir-rikors promotur, ma għandhiex titqies minn dina l-Qorti.
447. Il-Qorti, madanakollu, tosserva illi huwa ċar, mid-diċitura tar-rikors promotur, li għalkemm il-frazi '*fraus omnia corrumpit*' ma saritx referenza diretta għaliha, l-argumentazzjoni u l-premessi mqajjma mir-rikorrent u t-talbiet kollha illi huwa eventwalment għamel huma lkoll ibbażati fuq il-fatt illi huwa kien qiegħed jallega illi seħħet frodi fl-għoti tal-kuntratt lis-soċjeta' Vitals u li għalhekk tali kuntratti kellhom jiġu annullati u rexissi.
448. Ikkunsidrat dan il-punt, il-Qorti tqis illi huwa għalhekk opportun illi tqis tali punt imqajjem mir-rikorrent, ossija jekk il-kuntratti humiex milquta bl-element ta' frodi jew le.
449. Il-Qorti tqis illi, qabel ma tinoltra ruħha aktar f'dana l-aspett tal-każ odjern, ikun opportun illi ssir referenza għal ġurisprudenza nostrana, kif żviluppata tul is-snin, dwar il-prinċipju tal-frodi, sabiex kwalsiasi konsiderazzjoni illi dina l-Qorti għandha tagħmel isir fl-ambitu tat-tagħlim tal-Qrati tagħna.
450. Fil-kawża fl-ismijiet '***Transcontinental Properties Limited vs European School of English Limited***' deċiża fl-14 ta' Ottubru 2004 per Imħallef Tonio Mallia, dwar il-kuncett ta' frodi, ġie osservat is-segwenti:

*Tajjeb li qabel kull analiżi tal-konsiderazzjoni ta' fatt u ta' dritt involuti f'dan il-każ jiġu stabbiliti l-prinċipji kardinali konsakrati fil-ġurisprudenza tagħna relattivi għall-aspett tad-dolo f'materja ċivili;*

*Skond l-insenjament traċċjat fid-deċiżjoni "**Innocenzo Galea vs M. Zammit**", Appell Ċivili, 3 ta' Diċembru, 1919 (Vol. XXIV P I p 203) il-prinċipji huma s-segwenti:-*

*“(1) il mantenimento dei contratti e' di interesse generale purché e' principio di ordine pubblico; siffatto considerazione impone che nelle cause d'impugnazione di contratti per vizio di consenso si procede con massima circospezione perché non si abbia ad annullare un'atto che dovrebbe rimanere in vigore;*

(2) *i principi che regolano il dolo si devono applicare con maggior rigore quando trattasi di un atto a titolo gratuito che quando trattasi di un contratto a titolo oneroso;*

**(3) a provare il dolo bastano gli indizi e le congetture purché' siano gravi e concordanti, si da generare la convinzione che la liberalità o il contratto impugnato e' stato l'effetto di raggiri usati dall'altra parte o da terzi.**"

*Mill-prinċipji fuq raffigurati jitnisslu dawn l-osservazzjonijiet, ukoll meħuda mill-kazistika tagħna fuq is-sugġett:-*

(a) *"A costituire i raggiri non basterebbe il fatto di un predominio acquistato ed esercitato da una persona sull'altra per indurla al contratto, **ma occorre un'elemento specifico costituito dalle false rappresentazioni, dagli artifici fraudolanti, dallo inganno, usati quale mezzo per raggirare la scarsa intelligenza dell'altro contraente**" – "Giovanni Farrugia Gay vs Emanuele Farrugia Gay", Prim' Awla, Qorti Ċivili, 3 ta' Mejju, 1921 (Vol. XXIV P II p 578);*

(b) *"I raggiri usati da uno dei contraente sono stati tali che senza di essi l'altra parte non avrebbe contratto" - ("Terese Galea vs Salvatore Bonnici" a Vol. X pagna 592).*

**Fi kliem ieħor l-ingann irid ikun il-kawża determinanti li ta' lok għal ftehim li għaqad in-negozju** ("Alice Cassar Torreggiani vs Albert R. Manche", Appell Ċivili, 17 ta' Marzu, 1958 (Vol. XLII P I p 126);

(c) *Kif stabbilit fis-subinċiż (2) għall-Artikolu 981, id-dolo jew frodi ma huwa qatt preżunt iżda jrid jiġi pruvat minn min jallegaħ. Trid allura ssir il-prova li parti waħda użat "scienter" raġġiri frawdolenti u artifizji li kienu gravi ("Joseph Mifsud nomine vs Paul Tanti" u "Josephine mart Francis Galea vs Perit Walter Caruana Montaldo", iż-żewġ kawżi deċiżi rispettivament fl-4 ta' Frar, 1965 u s-16 ta' Diċembru, 1970).*

451. Fil-kawża 'Carmelo Sciortino vs Carmelo Vella' deċiża mill-Prim' Awla fis-27 ta' Ġunju 1961, dwar l-element ta' frodi, ġie osservat dan li ġej:

*Il-frodi tista' timmanifesta ruħha taħt diversi aspetti. Infatti, tista' tkun diretta, bħal meta jkun hemm l-animus nocendi", cioè il-propożitu tad-debitur li jiffroda l-kredituri tiegħu, jew indiretta u oġġettiva, biex hekk tissejjaħ, u cioè il-kuxjenza tad-debitur waħdu fil-każ tal-kuntratti gratuwiti, u dik tad-debitur mhux injota wkoll lill-istipulant l-ieħor fil-każ tal-kuntratti onerużi, li l-istess debitur ikollu jew jista' jkollu li b'dak l-att impunjat huwa sejjer jibqa' nsolventi jew li l-patrimonju tiegħu (tad-debitur) mhux sejjer ikun suffiċjenti biex jilqa' soddisfaċentement id-dritt tal-kredituri tiegħu; jew. fi kliem ieħor, id-debitur ma għandux bżonn necessarjament, qabel l-aljenazzjoni, juża*

*attivamente raggiunti u makkinazzjonijiet speċifiċi sabiex jirragġunġi l-iskop tiegħu biex l-att tiegħu jingħad frawdolent, imma biex ikun anki tali huwa suffiċjenti li huwa, bl-aljenazzjoni li jagħmel, ikun jaf li qiegħed jirrendi impossibbli jew diffiċli lill-kredituri tiegħu jikkonsegwixxu dak li lilhom jisthoqq in korrisondenza u bħala korollarju neċessarji tad-dritt tagħhom.*

452. Jidher, għalhekk, illi sabiex jirriżulta illi hemm l-element tal-fraus ossija frode, kif indikat mir-rikorrent, dana irid jirriżulta mill-aġir u azzjoni meħuda mill-persuna li kkontrattat għal gwadann, fil-każ odjern is-soċjeta' Vitals, u jrid jintwera illi kienet ir-raġuni principali illi wasslet għall-ottjeniment ta' dak minnha mixtieq bi ħsara lill-kontro parti – fil-każ odjern, il-konċessjoni emfitewtika għal tlett sptarijiet ġewwa Malta għal perjodu ta' tletin sena rinnovabbli unikament da' parte tagħha stess għal perjodu massimu ta' disgħin sena, kif ukoll il-ftehim kollha relatati.
453. Din il-Qorti tibda billi tosserva illi, mill-assjem tal-provi u fatti kif prodotti, l-element tal-fraus ossija frodi, kif ukoll *mala fede* da' parte tas-soċjeta' Vitals kif ukoll Steward sussegwentement, jista' jirriżulta fi tlett stadji tal-proċess kollu, ossija kemm dak li seħħ qabel l-għoti tal-kuntratt lis-soċjeta' Vitals, kemm ukoll dak li seħħ wara l-għoti ta' l-istess kuntratt, u saħansitra fl-istadju meta s-soċjeta' Steward daħlet fiż-żarbun tas-soċjeta' Vitals u assumiet l-obbligi kuntrattwali tal-Vitals.

#### **Aġir frawdolenti li wassal għall-għoti tal-kuntratt lis-soċjeta' Vitals**

454. Il-Qorti tqis illi, qabel ma tgħaddi biex tagħmel l-konsiderazzjonijiet tagħha, ikun ġust u opportun illi tagħmel referenza ampja għat-'*Timeline of key developments*' redatta abbilment u f'mod skematiku mill-Awditur Ġenerali fit-tieni rapport ferm dettaljat tiegħu, ossija dak ippubblikat f'Diċembru 2021, intitolat '**PART 2 | A REVIEW OF THE CONTRACTUAL FRAMEWORK (ABRIDGED)**', fejn minn paġna 8 sa paġna 15 ta' l-istess rapport jagħti '*time line*' dettaljata u ben deskritta tal-andament kollu tal-proċess tal-kuntratt odjern.
455. Il-Qorti tqis illi huwa ta' importanza kbira li tirriproduċiha in toto għall-kompletezza ta' tali atti, bil-għan illi tingħata stampa ċara li biha ser twassal il-Qorti tagħmel il-konklużjonijiet tagħha, u dana abbażi ta' konsiderazzjonijiet u studji magħmula mill-Awditur Ġenerali, liema Awditur Ġenerali għamel osservazzjonijiet ben eruditi u maħsuba, li dina l-Qorti ma għandha ebda diffikulta illi tagħmel bħala tagħha wkoll.

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

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

**3 March 2014** *A memorandum to Cabinet regarding the Gozo Health Campus, outlining the envisaged development and expansion of facilities and*

*services, was presented by the then Minister for Health, the Hon. Godfrey Farrugia.*

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

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

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

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

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

**27 March 2015** *Government published an Request for Proposals (RfP) for the granting of a services concession for the redevelopment, maintenance, management, and operation of the SLH, the GGH and the KGRH.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**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. Jirriżulta, mill-assjem tal-provi kif prodotti quddiem dina l-Qorti, kif ukoll mir-rassenja ta' dati kif redatti mill-Awditur Ġenerali fir-rapport tiegħu ppubblikat f'Diċembru 2021, illi **ferm qabel** ma l-Gvern għarraf lill-pubbliku in ġenerali bil-ħsieb tiegħu li jipprivatizza tlett Sptarjiet publiċi, liema ħsieb l-ewwel ġie indikat f'it zmien qabel li r-*Request for Proposals* ġie ppubblikat fis-27 ta' Marzu 2015, l-azzjonisti aħħarija u originali tas-soċjeta' Vitals, ossija 'l hekk imsejjha 'Beneficial Owners', kien ġia daħlu f'*Memorandum of Understanding* mal-Gvern ta' Malta fuq żvilupp ta' Sptarjiet.
457. Jirriżulta, di fatti, illi fl-**10 ta' Ottubru tas-sena 2014**, (fol 1158) l-investituri illi sussegwentement iffurmaw il-kumpanija Vitals Global Healthcare Limited, għamli ftehim, imsejjah '*Memorandum of Understanding*' mal-Gvern, u dana wara illi l-Gvern ġie mgħarraf li grupp ta' investituri kienu interessati jinvestu fl-Isptar ta' Ghawdex fejn jieħdu t-tmexxija tiegħu f'idejhom sabiex jestenduh u jtejbu l-operazzjoni tiegħu, kif ukoll sabiex tinfetaħ skola tal-Medicina mmexxija minn Barts School of Medicine. (vide para 190 sa 195)
458. Jirriżulta illi tali grupp ta' investituri kienu jikkonsistu fi żviluppaturi u operatori li sussegwentement iffurmaw is-soċjeta' Vitals Global Healthcare Ltd fosthom Mark Edward Pawley, bis-soċjeta' Bluestone Special Situations 4 Limited, Dr Ashok Rattehalli, bis-soċjeta' AGMC Incorporated u żewġ persuni ta' nazzjonalita Pakistana, Mohammad Shoaib Walajahi u Chaudhry Shaukat Ali, li kienu fformaw kumpanija bl-isem ta' Pivot Holdings Limited ġurnata qabel tali ftehim, ossija fid-9 ta' Ottubru 2014.
459. Jirriżulta illi l-Gvern obbliga ruħu, f'tali ftehim, illi ma jinnegozja ma' ħadd dwar l-Isptar ta' Ghawdex waqt illi l-ftehim kien viġenti, liema kundizzjoni kellha tibqa' viġenti sa l-aħħar ta' Frar, jew sa meta kien għadu validu il-ftehim bejn il-Gvern u l-investituri.
460. Jirriżulta li, sadanittant, kienet għadha ma saret ebda thabbira pubblika, għall-ghoti tat-tlett sptarjiet lill-pubbliku.
461. Jirriżulta wkoll, u ta' importanza kbira għal każ odjern, illi, permezz ta' tali ftehim, il-Gvern qabel ma' l-investituri illi ser jassistihom biex jipprovdihom l-informazzjoni kollha meħtieġa biex ikunu f'posizzjoni jagħtu l-aħjar offerta lill-Gvern għal dak minnu meħtieġ – jidher ċar li tali informazzjoni sussegwentement intużat mis-soċjeta' Vitals meta għamlet il-proposta tagħha li ġiet sussegwentement deskritta bħala "*true and detailed picture of healthcare in Malta and Gozo at present*" minn min kien qiegħed jevalwa l-offerta tal-Vitals.

**462. F'tali ftehim tal-10 ta' Ottubru 2014, il-Gvern kien insista illi kienu ser jaghmlu Due Diligence tal-Investituri kollha u li Gvern kellhu d-dritt li jhassar kollox f'każ li tali Due Diligence ma jghaddix!**

463. Sussegwentement, jirriżulta illi fit-**23 ta' Novembru tas-sena 2014**, sar ftehim bejn l-istess investituri, li kienu Mark Pawley għal Bluestone, Ram Tumuluri għal Portpool u Dr Ashok Rattehalu għas-soċjeta' AGMC mill-parti 'l waħda, u Dr Gupta għal Medical Associates of Northern Virginia, fejn **dawna kienu ġia qed jiftiehem kif ser jaqsmu l-profitti tal-proġett** li kien jinkludi: (vide para 90 sa 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. Jirriżulta, għal darba oħra, li, sadanittant, kienet għadha ma saret ebda thabbira pubblika, kif fuq imsemmi.

465. Jirriżulta illi fil-bidu ta' **Jannar 2015**, kif konfermat kemm minn Dr Konrad Mizzi, kif ukoll Mr Chris Fearn, l-investituri għamlu l-presentazzjoni tagħhom, iżda, fi kliem Dr Mizzi, il-htigijiet tal-Gvern ma kinux aktar li jiffukaw unikament fuq l-Isptar ta' Għawdex, iżda riedu jinkludu wkoll l-Isptarijiet f'Malta wkoll.

466. Hawnhekk, il-Qorti ma tistax ma tirrilevax illi, incidentalment, il-ftehim privat illi għamlu bejniethom l-investituri **wara** li gie ffirmat il-Memorandum of Understanding mal-Gvern fl-10 ta' Ottubru 2014, kien ġia jinkludi wkoll li ser jinvestu wkoll fi sptar ġewwa Malta, u possibbilment l-Isptar tal-Gvern St. Luke's – indikazzjoni ċara li setgħu kienu ġia konnoxxenza ta' xi tibdil ta' hsieb da' parte tal-Gvern.

467. Jirriżulta li eventwalment, skond Dr Mizzi, wara l-laqqha illi saret f'Jannar 2015, il-Gvern allegatament għarrafhom li ma kienx interessat fi proġett magħhom, peress illi riedu jkabbru l-proġett – **dokumentazzjoni in sostenn ma' tali allegazzjoni, madanakollu, ma jidher li ma jeżisti mkien!**

468. Jirriżulta, iżda, mill-banda l-oħra, illi mhux talli l-proposta tal-investituri ma kinetx qed tiġi kkontemplata, iżda talli fid-**9 ta' Frar 2015**, jiġifieri **wara** li din il-laqqha fejn, skond Dr Mizzi, l-investituri ġew mgħarrfa li l-Gvern ma kienx għadu interessat fil-pjan tagħhom, l-Executive Chairman tal-Malta Enterprise, f'ittra kontra-iffirmata mill-Ministru tal-Ekonomija u s-Segretarju Parlamentari għall-Planning, kiteb lid-Direttur Ġenerali tal-Artijiet fejn għarrfu illi l-Malta Enterprise kienet identifikat l-art tal-Isptar ta' Għawdex tal-kejl ta' 72,483sqm, ossija ta' l-istess daqs bħal dik

identifikata għall-investituri, “*for use as part of the medical hub intended to be created in Gozo*”. Kien għalhekk illi l-Malta Enterprise talbet lill-Government Property Department sabiex tagħmel dak kollu neċessarju sabiex tghaddi l-propjeta’ f’ isimha. (fol 2893)

469. Jirriżulta li, sadanittant, għal darba oħra, ma kienet għadha saret ebda tħabbira pubblika li l-Gvern kien interessat jagħti l-Isptar ta’ Għawdex u ta’ Malta lill-privat.
470. Jidher iżda, li sussegwentement, seta’ seħħ xi ripensament da parti tal-Awtoritajiet, u di fatti, fis-**16 ta’ Marzu 2015**, il-Kummissarju tal-Artijiet irċieva ittra, din id-darba ffirmata miċ-Chief Executive Officer tal-Malta Industrial Parks Limited, u kontra iffirmata mill-Ministru tal-Ekonomija u s-Segretarju Parlamentari għall-Planning fejn, filwaqt li għamel referenza għall-ittra tal-Executive Chairman tal-Malta Enterprise tad-9 ta’ Frar 2015, għarrfu illi gie miftiehem li l-art kellha tingħadda lill-Malta Industrial Parks Limited u mhux lill-Malta Enterprise, u għalhekk l-Kummissarju tal-Artijiet kellu jagħmel l-arrangamenti kollha biex tingħadda lill-Malta Industrial Parks Limited. Tali ittra kienet kontro iffirmata mill-Executive Chairman tal-Malta Enterprise ukoll.
471. Sadanittant, għal darba oħra, ma kienet għadha ma saret ebda tħabbira pubblika li l-Gvern kien interessat jagħti l-Isptar ta’ Għawdex u ta’ Malta lill-privat.
472. Eventwalment, fis-**27 ta’ Marzu 2015**, f’dokument ta’ erbgha u tletin faċċata (34), il-Gvern ippubblika ***Request for Proposals*** għall-konċessjoni għall-Isptarijiet ta’ St Lukes, Karin Grech u Għawdex, liema dokument, skond Dr Konrad Mizzi, gie redatt minn Ganado Advocates – il-Qorti hawnhekk tirrileva illi tali dokument huwa wiehed kompleks u dettaljat, illi ċertament ha ż-żmien tiegħu sabiex jiġi redatt u approvat, u għalhekk ma għandhiex dubju illi tali dokument kien ilu qed isir xogħol fuqu għal ġimgħat jekk mhux xhur minn qabel. Tali assunzjoni qieghda ssir ukoll abbażi ta’ dak illi qal Adrian Said, Executive Chairman tal-Projects Malta Limited fiż-żmien tal-RfP w il-proċess kollu, fejn fix-xhieda tiegħu insista li meta huwa kien beda f’**Settembru 2014** kien gia sab li l-RfP kien lest u preparat! (para 239)
473. Jirriżulta illi fid-dokumentazzjoni tar-*Request for Proposals*, ippubblikat fis-27 ta’ Marzu 2015, fost il-kundizzjonijiet imposti fuq il-bidder kien hemm is-segwenzi: (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. Jirrizulta illi fl-**ebda mument** ma' s-soċjeta' Vitals Global Healthcare Limited, iffurmata dak iż-żmien mis-soċjeta' Bluestone Investments Malta Ltd, li kienet giet registrata fid-9 ta' Diċembru 2014 bil-ghan esklussiv li l-investituri jikkonkludu dak miftiehem fl-10 ta' Ottubru 2014, ma gharrfet lill-Project Malta dwar xi kunflitt illi seta' kellha in vista ta' ftehim għa milhuq bejn l-investituri tagħha w il-Gvern ta' Malta speċifikatament fuq l-ghoti ta' l-isptar f'Għawdex lilhom.
475. Jirrizulta illi, skond it-timeline stabbilit f'tali '**Request for Proposals**', sa *gimghatejn* wara is-sejha pubblika, jiġifieri bejn it-13 u s-17 ta' April 2015, kien ser isir spezzjoni tat-tlett Sptarijiet bi ftehim ma' Projects Malta. Sussegwentement, sa *gimgha* wara, jiġifieri t-22 ta' April 2015, kull min kien interessat kellu l-**aħħar** ċans jitlob għal kjarifiki, liema kjarifiki imbagħad kellhom jiġu spjegati sa mhux aktar tard mit-28 ta' April 2015 – jiġifieri, skond tali timeline, kull min kien interessat kellu mhux aktar minn tlett gimghat sabiex jifhem il-portata tal-proġett tat-tlett sptarijiet li kienu ser jidhlu għaliha.
476. Jirrizulta illi, finalment, kull min kien interessat jagħmel proposta, kellu jagħmel tali proposta sa mhux aktar tard mid-19 ta' Mejju 2015, flimkien ma' '*bid bond*' ta' nofs miljun euro (€500,000) – jiġifieri **anqas minn xahrejn** wara is-sejha pubblika għal proġett li kien jinvolvi tlett sptarijiet ewlenin f'Malta u Għawdex.
477. Incidentalment, il-Qorti hawnhekk tosserva illi, fil-ftehim magħmul bejn l-investituri fit-23 ta' Novembru 2014, huma kienu qablu li sa' Jannar tas-sena 2015, kellhom javvanzaw fil-proġett is-somma ta' sitt mitt elf Dollaru Amerikan (\$600,000) sabiex jagħmlu tajjeb għal '*pre-project costs*'. Ghalkemm huwa minnu li fl-istess ftehim, tali flejjes ġew indikati bħala spejjeż varji, jibqa' l-fatt illi l-investituri kienu għa għamlu investment konsiderevoli f'tali proġett li, skond Dr Mizzi, kien ġie skartat mill-Gvern wara l-prezentazzjoni li għamlu l-investituri - huwa ferm diffiċili għall-Qorti li temmen li tali flejjes intilfu fix-xejn.
478. Jidher illi fid-19 ta' Mejju 2015, daħlu tlett proposti għand Projects Malta, iżda '*bid bond*' giet ipprezentata **unikament** mis-soċjeta' Vitals Global Healthcare Limited, liema kumpannija kienet iffurmata fit-**13 ta' Mejju 2015** u li fiha kien hemm 1,200 iškma '*full paid up*', permezz ta' depositu minn kont bankarju tal-Bank of Valletta ġewwa Victoria, Għawdex (fol 625).
479. Jidher illi, kif stqarrew it-tlett membri tal-Evaluation and Adjudication Committee li xehdu quddiem dina l-Qorti, ossija James Camenzuli, Manwel Castagna u Robert Borg, l-proposta tas-soċjeta' Vitals Global Assets Limited, ffurmata sitt ijiem qabel

ma pprezentat il-proposta, kienet waħda ben studjata u motivata, fejn kellhom studju approfondit ħafna tal-proġett kollu u indikazzjonijiet ċari dwar x'kellu jsir.

480. Fi kliemhom stess:

*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. Il-Qorti hawnhekk, ma tistax ma' tirrilevax li, ċertament fuq medda qasira ta' xagħrejn, kien ikun impossibbli għall-kwalsiasi entita' sabiex tressaq pjan daqstant fid-dettall u bi business plan vijabbli, jekk mhux abbaži ta' studji u informazzjoni approfonditi illi setgħet għamlet, jew hija stess, jew traminte terzi minnha imqabnda sa minn qabel ma ħarġet ir-Request for Proposals.

**482. Fil-każ odjern, din il-Qorti ma ghandha assolutament ebda dubju illi s-soċjeta' Vitals Global Healthcare Limited ghamlet użu tal-ftehim milhuq mal-Gvern ta' Malta permezz ta' Memorandum of Understanding li sar fl-10 ta' Ottubru 2014, fejn l-investituri fil-kumpanija li kienet l-azzjonista prinċipali tagħha, ossia Bluestone Investments Malta Limited, kienu ġia rabtu lill-Gvern sabiex jagħtihom l-informazzjoni kollha meħtieġa biex ikunu f'posizzjoni li jagħmlu proġett ta' Sptar ġewwa Ghawdex u Skola Medika.**

**483. Din il-Qorti ma ghandha wkoll ebda dubju li jidher ċar li s-soċjeta' Vitals Global Healthcare Limited abbużat mill-informazzjoni ġia a konoxxenza tal-investituri tagħha, sabiex tippreżenta proġett li ma setax ma jġix aċċettat mill-Gvern ta' Malta, liema Gvern kien ġia ikkommetta ruhu, fil-programm elettorali tiegħu li bih kien ġie elett sentejn qabel, li jtejjeb l-Isptarijiet ta' Malta u Ghawdex, u li għalhekk kien marbut politikament sabiex jattwa dak li wiegħed, w l-investituri tas-soċjeta' Vitals, ben konxji ta' tali sitwazzjoni politika, permezz ta' raġġiri u manuvri ben maħsuba minn qabel, hadu vantaġġ mill-ambizzjonijiet politiċi tal-Gvern u wasslu lill-istess Gvern ta' Malta sabiex jagħżel il-proġett propost minnhom.**

484. Din il-Qorti, madanakollu, ma tistax ma tosservax il-metodoloġija laxka u xejn professjonali, kwazi kwazi dilettalesk, illi biha persuni fdati mill-Gvern sabiex jevalwaw u jaġġudikaw il-proġett kif ukoll sabiex imexxu l-proċess kollu li wassal għall-kuntratti mogħtija lis-soċjeta' Vitals, operaw bih tul il-proċess kollu.

485. Jidher ċar, mill-assjem tal-provi, illi l-Kumitat ta' Evalwazzjoni u Aġudikazzjoni ma għamel assolutament ebda evalwazzjoni tad-*Due Diligence* finanzjarja ta' l-istess soċjeta' Vitals Global Healthcare Limited, u straħet biss fuq hekk imsejja "Letters of Comfort" minn banek internazzjonali, liema dokumentazzjoni, madanakollu, eventwalment irriżulta illi ma' wasslu għall-ebda investment da' parte ta' tali banek fil-proġett li seħħ f'Malta, fejn jirriżulta li l-unika sors finanzjarju li s-soċjeta' Vitals ottjeniet, apparti ħlasijiet regolari da' parte tal-Gvern ta' Malta stess, kien minn bank

lokali, ossija il-Bank of Valletta plc, li fih wara kolloxx il-Gvern ta' Malta huwa azzjonist prinċipali.

- 486. Din il-Qorti ma tistax ma tosservax ukoll illi, filwaqt li fil-Memorandum of Understanding illi sar f'Ottubru 2014, kien ġie speċifikat illi l-Gvern kien qed jinsisti illi ssir Due Diligence tal-investituri kollha involuti, fir-Request for Proposals, ma ssir assolutament ebda rikjesta għall-informazzjoni dwar Due Diligence ta' min kien qiegħed jagħmel il-proposti – għal dina l-Qorti, din hija indikazzjoni ċara li ma kien hemm ebda raġuni sabiex dina ssir stante illi l-hruġ tar-Request for Proposals kien ovvjament parti konsegwenzjali tal-ftehim illi l-investituri kienu laħqu mal-Gvern fl-10 ta' Ottubru 2014.**
- 487. Din il-Qorti, di fatti, hija konvinta illi l-hruġ tar-Request for Proposals fis-27 ta' Marzu 2015 kien biss parti mill-pjan kollu maħsub u kkonċertat unikament mill-investituri li kienu għamli l-ftehim tal-10 ta' Ottubru 2014 mal-Gvern li, permezz tar-raġġiri u 'leverage' finanzjarja illi saħqu illi kellhom, b'fondi ta' biljuni ta' Euro, għarrqu b'kullhadd u, wasslu lill-Awtoritajiet sabiex jemmnu il-gideb tagħhom u jikkonċedulhom il-proġett finali, liema raġġiri eventwalment sfumaw fix-xejn u l-hafna wegħdiet tagħhom baqghu fl-arja.**
488. Dwar d-*Due Diligence*, jiġi osservat illi l-persuni kollha involuti fl-Evaluation and Adjudication Committee insistew b'qawwa kbira illi ma kienx xogħolhom li jaraw li jsir id-*Due Diligence* tas-soċjeta' Vitals Global Healthcare Limited, liema *Due Diligence*, huma insistew, ma kienx inkluż meta ġie redatt fir-Request for Proposals redatt mill-Avukati imqabbda mill-Gvern għal dan il-ġħan, ossija Ganado Advocates – **il-Qorti ingħatat x'tifhem, allura, li kellhom indikazzjoni li ma kienx hemm bżonn li jsir Due Diligence.**
489. Jiġi osservat ukoll illi anke l-Awdituri tas-soċjeta' intimata Malta Industrial Parks Limited, sussegwentement imsejjaħa INDIS Limited, ossija RSM Limited, li inċidentalment kienu wkoll membru ta' l-Isteering Group illi kien qiegħed imexxi l-implimentazzjoni tal-proġett kollu sa minn qabel ma nħareġ l-RfP, fir-rapport illi huwa rredigew għas-soċjeta' INDIS Limited sabiex jiġi ġustifikat l-importanza tal-investment tas-soċjeta' Vitals Limited, u dan sabiex jiġi sodisfatt dak pprovdut fl-Artikolu 31 tal-Kap 573, liema rapport b'kombinazzjoni ġie pprezentat gurnata qabel l-iffirmar tal-kuntratt ta' konċessjoni enfitewtika, kienu insistew illi r-rapport tagħhom ma kellux jitqies bħala '*audit finanzjarju*' tas-soċjeta' Vitals.
- 490. Din il-Qorti, għalhekk, tasal għall-assunzjoni u konkluzjoni illi jidher ċar li l-ftehim li l-investituri kellhom mal-Gvern iffirmat fl-10 ta' Ottubru 2014 kien parti intrinsku minn proċess shiħ illi wassal kemm għall-hruġ ta' Request for Proposals, kif ukoll għall-ghazla tas-soċjeta' Vitals u għall-ghoti tal-kuntratti finali lill-istess Vitals.**
491. Dana qiegħed jingħad ukoll għax, in vista ta' tali konnessjoni ċara u diretta bejn il-Memorandum of Understanding tal-10 ta' Ottubru 2014 u l-ghoti tal-konċessjoni lis-soċjeta' Vitals, kien obbligu ta' l-istess soċjeta' Vitals, fil-proċess tal-Evalwazzjoni,

illi tindika u tiddikjara biċ-ċar li kien hemm tali sitwazzjoni ta' kunflitt, liema sitwazzjoni ta' kunflitt kellu, ta' bilfors, iwassal lill-Kumitat ta' Evalwazzjoni, sabiex jiskwalifika lis-soċjeta' Vitals mill-proċess ta' għażla – madanakollu, l-membri kollha tal-Kumitat insistew li ma kienu jafu b'ebda Memorandum of Understanding, u saħansitra Robert Borg saħaq li, kieku kien jaf, kien jirrifjuta l-inkarigu.

492. Il-fatt illi s-soċjeta' Vitals Global Healthcare Limited, **xjentement**, għażlet illi żzomm mistur l-eżistenza tal-*Memorandum of Understanding* tal-10 ta' Ottubru 2014, mill-Kumitat ta' Evalwazzjoni, hija indikazzjoni ċara tal-intenzjoni frawdolenti illi hija kellha fil-mument illi pprezentat il-proposta tagħha lill-Gvern, liema intenzjoni frawdolenti kienet tali illi wasslet lill-Gvern sabiex jaċċetta l-proposta tas-soċjeta' Vitals, bl-impressjoni illi l-istess soċjeta' kienet f'posizzjoni illi tattwa dak minnha imwiegħed – impressjoni li eventwalment gie ppruvat li kienet waħda erroneja, peress illi kollox sfuma fix-xejn hekk kif is-soċjeta' Vitals bdiet tikser kull waħda mill-obbligi u milestones minnha aċċetatti.
493. Tali aġir frawdolenti baqa' jippersisti, mhux biss qabel l-ghoti tal-kuntratti, iżda wkoll matul il-perjodu kollu illi fiha s-soċjeta' Vitals Global Healthcare Limited, bl-azzjonisti Bluestone Investments Malta Limited, kienet qiegħda topera, fejn joħroġ ċar, mill-volum ta' provi prodotti quddiem dina l-Qorti, kif ukoll mir-rapporti dettaljati tal-Awditur Ġenerali, illi l-wegħdijiet finanzjarji minnha magħmula kollha fallaw filwaqt illi l-proġetti illi kellhom jimplimentaw, baqgħu qatt ma ġew ikkompletati, b'hafna minnhom lanqas biss mibdija, filwaqt illi l-wegħda tagħhom li jdaħħlu Turizmu Mediku ġewwa Malta, liema wiegħda kienet ċertament dik illi wasslet lill-Gvern ta' Malta, possibbilment riżultat ta' inġenwita', sabiex jilqa' l-proposti tas-soċjeta' Vitals, kienet wegħda fiergħa u bla bażi, peress illi qatt ma avverat ruħha u qatt ma sar ebda tentattiv da' parte tas-soċjeta' Vitals biex timplimentaha. Huwa ċar illi l-utilizz ta' l-idea ta' "*medical tourism*" kien biss parti mill-messa in xena u raġġiri shaħ illi għamlu l-investituri tas-soċjeta' Vitals Global Healthcare Limited u l-istess soċjetajiet Vitals biex tagħmi lill-Gvern ta' Malta biex tikkonċedilha l-kuntratti u, partikolarment, il-konċessjoni emfitewtika fuq propjeta' kbira ġewwa Malta u Ghawdex, illi ċertament għandhom valur spekulattiv ferm akbar minn dak mediku.

### **Aġir Frawdolenti ta' Steward Malta Limited**

494. Jirriżulta, mill-assjem tal-provi, illi s-soċjeta' Steward Malta Limited, tramite il-kumpanija Steward Health Care International Limited, fis-16 ta' Frar tas-sena 2018, akkwistat l-isħma tas-soċjeta' Vitals Global Healthcare Limited, u bir-riżultat ta' dan, akkwistat l-isħma wkoll tas-soċjetajiet Vitals Global Healthcare Assets Limited u Vitals Global Healthcare Management Limited.
495. Din il-Qorti ma għandha ebda dubju li, dak iż-żmien, is-soċjeta' Steward Health Care International Limited kienet ben konxja tan-nuqqasijiet li kien hemm da' parte tas-soċjeta' Vitals illi hija kienet ser takkwista w l-obbligi minnhom assunti u mhux onorati, u dan anke in vista tal-fatt illi s-CEO tal-Vitals, sa ftit qabel, ossija Armin Ernst, kien issa l-President ta' Steward International.

496. Jirriżulta madanakollu, illi minn dakinhar illi akkwistat l-ishma tas-soċjeta' Vitals, jidher li s-soċjeta' Steward daħlet f'serje interminabbli ta' ftehim mal-Gvern għal dak illi jirrigwarda l-finanzjament tal-proġett li, originalment, kien indikat illi ser isir minn banek esteri, iżda li finalment seħħ unikament minn bank Malti, ossija il-Bank of Valletta plc, fejn il-Gvern għamel tajjeb għalihom.
497. Jirriżulta, di fatti, illi permezz ta' tali ftehim varji, is-soċjeta' Steward spiċċat ħadet erbgha loans b'kollox minghand il-Bank of Valletta plc, ossija wiehed ta' ħames miljun Euro (€5,000,000) fit-8 ta' Mejju 2018, ieħor ta' tlett miljun Euro (€3,000,000) fid-19 ta' Settembru 2018 u tnejn oħra fil-valur ta' tnejn u għoxrin miljun Euro (€22,000,000) u ħames miljuni u disgħa mitt elf Euro (€5,900,000) fis-17 ta' Lulju 2019 – dawna kollha flimkien jagħmlu total ta' ħamsa u tletin miljun u disgħa mitt elf euro (€35,900,000).
498. Jirriżulta illi f'dawna l-kuntratti ta' self kollha, il-Gvern ta' Malta għamel tajjeb għas-soċjeta' Steward, presumibbilment bħala sid tal-propjeta' li kienu fil-pussess tas-soċjeta' Steward.
499. Jirriżulta, iżda, illi permezz ta' kuntratt iffirmat fis-**27 ta' Awissu 2019**, it-tlett soċjetajiet Steward, għalkemm ben konxji tal-proċeduri odjerni quddiem dina l-Qorti, wasslu lill-Gvern ta' Malta sabiex jaqblu li jinbidel il-kontenut tas-*Service Concession Agreement* illi kien iffirmat fit-30 ta' Novembru 2015, fejn gie miftiehem is-segweni:
- (i) if, by way of any Applicable Law or any final order, **judgment** (sottolinjar tal-Qorti), 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. Jirriżulta illi, skond Skeda 7 tas-*Services Concession Agreement*, f'dan il-każ, il-Gvern ta' Malta kien qed jassumi fuqu l-ħlas tad-djun kollha mal-Bank of Valletta plc, ta' ftit anqas minn sitta u tletin miljun Euro (€36,000,000) kif ukoll penali ta' mitt miljun euro (€100,000,000) dovuta ill-Steward.
- 501. Din il-Qorti ma ghandha ebda dubju li s-soċjeta' Steward kienet ben konxja tal-kawża odjerna meta dahhlet lill-Gvern ta' Malta f'tali obbligu ġdid, u għalhekk din il-Qorti ma ghandha ebda dubju wkoll illi tiddikjara li tali kundizzjonijiet kienu riżultat ta' aġir frawdolenti tas-soċjeta' Steward li riedet iddawwar a favur tagħha sitwazzjoni kkawżata minn azzjoni frawdolenti tal-preċedessuri tagħha bil-għan illi tagħmel arrikkiment indebitu minn fuq dahar il-Gvern ta' Malta w iċ-ċittadini Maltin u Ghawdxin.**
- 502. Il-Qorti tistqarr, madanakollu, illi hija tassew imhassba kif persuni responsabbli mill-Awtoritajiet Governattivi setghu qatt xjentement jidhlu għal tali obbligi daqstant onerużi fuq il-Gvern, u trid temmen illi tali obbligu gie minnhom assunt,**

**possibbilment rizzultat ta' ingenwita', jekk mhux pressjoni sabiex il-proġett oriġinali jibqa' vijabbli, izda ċertament temmen li sehħ in vista tal-aġir frawdolenti u, possibbilment kriminali, kemm tas-soċjeta' Steward, kif illum komposta, kif ukoll mis-soċjeta' Vitals, kif oriġinalment komposta u l-investituri tagħha.**

**503. Il-Qorti tistab ċerta illi ebda persuna li għandha għal qalbha l-interessi tal-pajjiż ma kien jidhol għal tali obbligi onerużi, jekk mhux għax imġieghel b'mod frawdolenti u qarrieqi, liema piż assunti iwassal biss sabiex is-soċjeta' Steward takkwista vantaġġi finanzjarji fuq il-Gvern ta' Malta illi bl-ebda mod ma huma dovuti lilha u li għalhekk huwa unikament rikatt u arrikkiment indebitu a spejjeż taċ-ċittadin.**

**504. L-aġir tas-soċjeta' Steward, f'din l-istanza, hija tassew wahda kundannabbli u turija ċara tan-nuqqas ta' rispett lejn l-obbligi minnha assunti meta akkwistat l-ishma fis-soċjeta' Vitals, kif ukoll tal-proċess ġudizzjarju kollu, fejn permezz ta' tali ftehim, ittentat tinfluwenza wkoll id-deċiżjoni aħharija ta' dina l-Qorti, bil-għan uniku illi takkwista vantaġġi finanzjarji filwaqt illi ma tonorax l-obbligi minnha assunti.**

### **Ikkunsidrat**

505. Ikkunsidrat dak kollu kif fuq deskritt, dina il-Qorti tibda biex tirribadixxi li ma għandha ebda dubju illi s-soċjeta' Vitals Global Healthcare Limited illum Steward Malta Limited, kif ukoll is-soċjetajiet Vitals Global Healthcare Assets Limited illum Steward Malta Assets Limited u s-soċjeta' Vitals Global Healthcare Management Limited illum Steward Malta Management Limited ingħataw s-*Service Concession Agreement* tat-30 ta' Novembru 2015, il-*Health Services Delivery Agreement* tat-30 ta' Novembru 2015, il-*Labour Supply Agreement* tat-8 ta' Jannar 2016 u l-*Konċessjoni Emfitewtika* tat-22 ta' Marzu 2016, **rizzultat ta' raġġir u gideb intizi unikament sabiex jikkorrompu l-hsieb w il-valutazzjoni ta' min kien responsabbli biex jagħżel u jiddeċiedi, liema raġġiri wasslu sabiex tiggwadanja unikament is-soċjeta' Vitals Global Healthcare Limited, flimkien mas-soċjetajiet sussidjarji Vitals Global Healthcare Assets Limited u s-soċjeta' Vitals Global Healthcare Management Limited, illum ikoll propjeta' tas-soċjeta Steward Malta International Limited, a skapitu tal-Gvern ta' Malta.**

506. Il-Qorti ma għandha ebda dubju wkoll illi, fil-mument li s-soċjeta' Steward Healthcare International Limited akkwistat l-ishma tas-soċjeta' Vitals Global Healthcare Limited, l-obbligi kuntrattwali u l-milestones illi kienu obbligaw ruħhom illi jottemperaw ruħhom magħhom is-soċjetajiet Vitals ma kinux ġew milħuqa bl-ebda mod, bir-rizzultat illi l-Gvern ta' Malta kien obligat illi ma jaċċetax kwalsiasi trasferiment ta' ishma għal għand Steward Healthcare International Limited, u minflok kellu jgħaddi biex jitlob għar-rexisjoni tal-kuntratti kollha abbażi ta' non adempjenza da' parte tas-soċjeta' Vitals.

507. Il-Qorti ma għandha ebda dubju wkoll illi l-Gvern ta' Malta, flimkien mal-awtoritajiet l-oħra kompetenti msejja fil-kawża odjerna, kellhom l-obbligu w dmir illi jirrexxindu l-kuntratti kollha, in vista tar-raġġiri u aġir frawdolenti mħaddna b'mod sistematiku mis-soċjeta' Vitals u Steward u għalhekk;
508. Il-Qorti, għalhekk, ma għandha ebda dubju wkoll illi kien dmir tar-rikorrent, bħala membru tal-Kamra tar-Rappreżentanti, elett sabiex jirrappreżenta, jiddefendi u jippromwovi l-interess taċ-ċittadin, illi fin-nuqqas ta' aġir da' parti tal-awtoritajiet kompetenti, jagħmel użu mill-għodda mogħtija lillu fl-Artikolu 33 tal-Kap 573 tal-Liġijiet ta' Malta u jitlob għar-rexissjoni tal-Konċessjoni Enfitewtika tat-22 ta' Marzu 2016, flimkien mal-ftehim kollu illi sar antecendement għal tali Konċessjoni, lkoll indikati bħala '*Related Instruments*', liema ftehim għandhom jitqiesu bħala parti integrali tal-konċessjoni emfitewtika datata 22 ta' Marzu 2016.
509. Għaldaqstant, din il-Qorti tara illi l-azzjoni tar-rikorrenti, kif premessa, u kif ippruvata, timmerita illi tintlaqa'.

## **Konkluzjoni**

Il-Qorti,

Wara illi semgħet ix-xhieda prodotti u rat id-dokumentazzjoni vasta miġjuba quddiemha;

Wara illi rat is-sottomissjonijiet bil-miktub tal-abbli difensuri tal-partijiet;

Wara illi semgħet it-trattazzjoni finali ta' l-istess abbli difensuri tal-partijiet;

Wara illi stabbiliet u għarblet sew il-fatti tal-każ, u

Wara illi għamlet il-konsiderazzjonijiet tagħha fid-dettall;

Tgħaddi biex taqta' u tiddeċiedi l-vertenza billi:

**Tiċhad** l-eċċezzjonijiet kollha ta' l-intimati kollha.

**Tilqa'** t-talba tar-rikorrenti kif redatta, u għalhekk:

**Tiddikjara** illi s-*Services Concession Agreement* tat-30 ta' Novembru 2015, il-*Health Services Delivery Agreement* tat-30 ta' Novembru 2015 u l-*Labour Supply Agreement* tat-8 ta' Frar 2016, flimkien mal-emendi u addendum varji illi saru, għandhom jitqiesu li jiffurmaw parti integrali tal-Konċessjoni Enfitewtika temporanja konċessa lis-soċjeta' Steward Malta Assets Limited, ġia Vitals Global Healthcare Assets Limited, tat-22 ta' Marzu 2016 fl-atti tan-Nutar Dottor Thomas Vella.

**Tiddikjara** illi l-intimati Steward Malta Assets Limited, Steward Malta Limited u Steward Malta Management Limited ma adempwewx u kisru l-obbligi tagħhom ai termini tal-kuntratt tat-22 ta' Marzu 2016 kif ukoll tas-*Services Concession Agreement* tat-30 ta' Novembru 2015,

tal-*Health Services Delivery Agreement* tat-30 ta' Novembru 2015 u tal-*Labour Supply Agreement* tat-8 ta' Frar 2016 flimkien ma' l-emendi u addendum illi saru sussegwentement.

**Tiddikjara** illi l-Kap Eżekuttiv tal-Awtorita' tal-Artijiet, li assumu l-funzjonijiet li qabel kien jassumi l-Kummissarju tal-Artijiet, u ċ-Chairman tal-Bord tal-Gvernaturi tal-Awtorita' tal-Artijiet kif ukoll l-Avukat Ġenerali, huma f'obligu, ai termini tal-liġi sabiex jittutellaw il-proprjeta' pubblika u biex jieħdu l-passi neċessarji sabiex jassiguraw illi l-kundizzjonijiet kollha tal-proprjeta' konċessa jiġu adempiti u mhux mibdula ai termini ta' l-istess kuntratti u tar-resoluzzjoni tal-Kamra tad-Deputati, u għaldaqstant:

**Thassar u tannulla l-Konċessjoni Enfitewtika temporanja fl-atti tan-Nutar Thomas Vella tat-22 ta' Marzu 2016 kif ukoll tas-*Services Concession Agreement* tat-30 ta' Novembru 2015, tal-*Health Services Delivery Agreement* tat-30 ta' Novembru 2015 u tal-*Labour Supply Agreement* tat-8 ta' Frar 2016 flimkien mal-emendi u addendum varji illi saru u li jiffurmaw parti integrali tal-konċessjoni enfitewtika temporanja surreferita,**

**Tordna** li tintradd lura l-proprjeta' kollha fejn jinsabu s-siti ta' *St. Luke's Hospital* St. Luke's Road Pieta, b'arja 54,728 metri kwadri, il-*Karin Grech Rehabilitation Hospital* f' St. Luke's Road Pieta, b'arja superficjali ta' 768 metri kwadri u l-*Gozo General Hospital* ta' 72880.92 metri kwadri fi Triq I-Isqof Pietro Pace, Rabat, Għawdex kif aħjar deskritti fil-konċessjoni enfitewtika surreferita lill-istess Kap Eżekuttiv tal-Awtorita' tal-Artijiet.

**Tinnomina** li-Nutar Principali tal-Gvern sabiex jipubblika l-att relattiv tat-thassir u nullita' tal-imsemmija konċessjoni enfitewtika temporanja sa żmien tlett xhur millum.

**Tirriserva** li tinnomina kuraturi deputati biex jirrappreżentaw lill-Kap Eżekuttiv tal-Awtorita' tal-Artijiet, lic-Chief Executive Officer tal-Malta Industrial Parks Limited u lill-Gvern ta' Malta u/jew Vitals Global Healthcare Assets Limited fuq l-att ta' thassir u nullita' tal-imsemmija konċessjoni enfitewtika f'każ illi jintalab wara li tkun ingħatat is-sentenza.

**Spejjeż** tal-proċeduri odjerni w tal-atti notarili meħtieġa in ottemperanza mad-deċiżjoni odjerna għandhom ikunu kollha a kariku tas-soċjetà Steward Malta Limited.

**Francesco Depasquale**  
**Imhallel**

**Rita Sciberras**  
**Deputat Registratur**