



International

Steward Health Care International | Calle de Velázquez, 34, 28001 Madrid

T +34 9199 93370 | E info@stewardinternational.org | www.stewardinternational.org

CONFIDENTIAL

Prime Minister of the Republic of Malta
Dr Robert Abela
Office of the Prime Minister,
**Auberge de Castille,
Valletta VLT 2000,
Malta.**

State Advocate
Dr Christopher Soler
**Casa Sc.aglia
16, Mikiel Anton Vassalli Street,
Valletta
VLT 1311
Malta.**

27 September 2021

Dear Sirs:

We are respectfully reaching out to you in relation to the contractual relationship between the Government of Malta (“**GOM**”) and Steward Malta Ltd (C-70546), Steward Malta Assets Ltd (C-70625) and Steward Malta Management Ltd (C-70624) (collectively for the purposes of this letter only, the “**Concessionaire**”) whose principal documentary framework (all documents together the “**Concession**” or, when referred individually, as herein defined below) consists of the following:

- i. Service Concession Agreement (as amended through an addendum of the 30th of June 2017) dated 30th November 2015 (the “**SCA**”);



International

Steward Health Care International | Calle de Velázquez, 34, 28001 Madrid

T +34 9199 93370 | E info@stewardinternational.org | www.stewardinternational.org

- ii. Health Services Delivery Agreement (as three times amended through two addenda both dated 7th December 2015 and a further addendum of the 30th of June 2017) (the “HSDA”);
- iii. Labour Supply Agreement, (as amended through an addendum of the 30th of June 2017) dated 8th January 2016 (the “LSA”);
- iv. Emphyteutical Deed: a notarial deed by virtue of which GOM granted title over the Sites¹ to the Concessionaire.
- v. The SCA, HSDA and LSA (collectively the “**Transaction Agreements**”) were amended or waived in conditions by virtue of side letters of the 19th of May 2016, 14th February 2017 and 23rd June 2017;
- vi. The Settlement Agreement in relation to certain payment claims under the LSA and the HSDA dated 19 February 2021.

The purpose of this letter is (a) to provide a summary account of the position in which the Concessionaire is today in respect of the Concession and the Concessionaire’s relationship with GOM and, (b) drawing from such account, to reiterate the imperative need to reach an agreement with GOM going forward (and options in such respect) in respect of the Concession, which is both fair and sustainable for both parties.

I.- Background: award of the Concession to VGH

- GOM granted, following what was meant to be a competitive process, a Concession to develop, design, engineer, monitor, procure, finance, construct, equip, operate, maintain, embellish, and manage certain sites (GGH, SLH, KGRH) and to provide concession services and healthcare services on and from such sites. The Concession was granted to Vitals Global Healthcare (“VGH”) in November 2015.
- Recent evidence suggests that the granting of the Concession to VGH was, to say the least, improper. It is not the purpose of this letter to consider and conclude if the award was fraudulent (though there are clear indications that this is case). This analysis will require further investigation and review of documentation which may not be made available to us and is beyond our purpose today. We are, though, aware that criminal

¹ Sites means the St Luke’s Hospital campus (“SLH”), Karin Grech Rehabilitation Hospital (“KGRH”) and the Gozo General Hospital campus (“GGH”).



International

Steward Health Care International | Calle de Velázquez, 34, 28001 Madrid

T +34 9199 93370 | E info@stewardinternational.org | www.stewardinternational.org

investigation proceedings are under way, and as part of such proceedings Steward Malta has had its offices searched by the police.²

- On the face of factual evidence leading to Steward taking over from VGH we can, however, confidently conclude that (a) the shortcomings of VGH immediately upon being granted the Concession made of VGH an unsuitable grantee; (b) with hindsight, the lack of action of other bidders in light of VGH's failure to meet its undertakings to become the preferred bidder and, subsequently, the grantee, raises questions about the true nature of the tender and the competing bidders involved in it (and if these were ever qualified bidders) and (c) the lack of action by GOM (*other than in supporting VGH by, amongst others, extending the effective date for the entering into effect of the Concession or by waiving the key requirement to accredit bank financing to VGH or indeed by signing off on bills and payments quarterly without requiring VGH to produce accounts*) suggests that not only the process of selecting VGH but the treatment of this entity as Concessionaire and the non-exercise of its contractual termination rights by GOM over a period of almost 50 months is suspicious, suggesting some form of collusion between grantor and grantee.

II.- Taking over the Concession by Steward by acquiring the share capital of VGH

- Steward took over from VGH in February 2018. It did this (a) in good faith, assuming, based on the tender being Government-led, the due process culminating in the granting of the Concession to VGH and (b) based on explicit assurances from GOM, that the Concession would be restructured to make it bankable, a condition to take on the Concession.
- It is necessary to stress here that the assurances from GOM in respect of (b) above were also represented by GOM to Eurostat in 2018 (the year in which Steward took over). The following is a summary account and reflection on the dialogue between GOM and Eurostat in respect of the Concession (we attach **Annex I** the European Commission

² On Monday 6 September 2021, a cohort of police officers, including two inspectors, accompanied by third parties who were purportedly court-appointed experts, turned up at the offices of the Concessionaire with a search warrant issued by a magistrate. The police requested to see and seize documentation relating primarily to the Concession award and operation. They also seized laptops and smartphones belonging to certain employees of the Concessionaire. From the documentation provided by the police (primarily a copy of the search warrant), we understand that the search refers to an inquiry requested by the NGO Repubblika for suspected corruption. Although, as you will appreciate, the content of the inquiry is confidential, we are aware from media reports that this particular inquiry refers to alleged misconduct of three ex-Ministers in connection with the award of the Concession. Steward has fully cooperated with the Police, but you will of course appreciate and understand that such interventions are prejudicial to the serene operation of the hospitals by the Concessionaire besides being potentially harmful to the image and reputation of the Concessionaire.



International

Steward Health Care International | Calle de Velázquez, 34, 28001 Madrid

T +34 9199 93370 | E info@stewardinternational.org | www.stewardinternational.org

“*Final Findings Eurostat EDP [Excessive Deficit Procedure] dialogue visit to Malta 31 May-1 June 2018*” for a full review of the specific terms of this submission) which are relevant for the purpose of this letter:

- the National Statistics Office (“NSO”) identified in the Concession framework elements that automatically lead to the recording of the assets on GOM balance sheet. We contend that this results in a misrepresentation of the basis upon which the project was tendered and awarded to VGH with the knowledge and acceptance of VGH. The project was meant to be an SPV “ring fenced” PPP but was not awarded on that basis,
- the NSO admitted, with a view to providing comfort in respect of a broken Concession and the fact that Steward would take over to fix it, that new complete contracts on the PPP agreement between GOM and Steward Health Care International were [in 2018] under negotiation and that these would be provided to the European Commission “*as soon as possible*”. To date (2021) this has not happened (please refer to IV below),
- the initial investment of VGH was meant to be € 220,000,000 to cover, amongst other, construction costs. However, in June 2018 (almost 3 years after the Concession was awarded) no major capital expenditure had yet been incurred on the project. As a result, key contractual terms of the SCA such as the construction milestones were in default,
- as early as January 2018, the NSO notified Eurostat that discussions of a takeover by the US group Steward Health Care from the then shareholders (VGH) were under way. The takeover would result in, *GOM officials explained to Eurostat*, the renegotiation of a new agreement after the change in ownership of VGH to the Steward Health Care group. The contracts, it was represented by GOM, were expected to remain unchanged in the operational obligations of the private partner but financing and government obligations to buy minimum levels of service (amongst other elements) were under discussion. To date (2021) none of this has been honoured by GOM.
- based on the above representations of GOM officials to Eurostat, Eurostat concluded that:
 - “*The new agreements will have to be reassessed as soon as signed*”.
 - “*The Maltese statistical authorities will provide the new complete contracts on the PPP agreement between government and Steward*”



International

Steward Health Care International | Calle de Velázquez, 34, 28001 Madrid

T +34 9199 93370 | E info@stewardinternational.org | www.stewardinternational.org

- The Concessionaire *Healthcare International. Deadline: as soon as signed.* [Action point number 21 on page 24]
 - *“The Maltese statistical authorities will include in the EDP questionnaire Table 11 the PPP agreement with Vitals Global Healthcare/Steward Healthcare International. Deadline: before the October 2018 notification.”* [Action point number 22 on page 24]
- The undertaking from GOM to Steward to provide a bankable concession framework (as also represented to the European Commission) has not been honoured to date. GOM deceived Steward by various means and specifically by, on at least two occasions (December 2020 and May/June 2021), agreeing to signing dates of documentation purporting to restructure the Concession and failing, at the last minute, to proceed to such signing (please refer to IV below). We argue that such manoeuvres reflect the willingness throughout of GOM to continue with the Concession on its current terms whilst at the same time gaining time in prejudice of Steward with the obvious intention, amongst other, of “*saving face*”. This position is unsustainable for Steward and unfair.
- The above statement is confirmed by the fact that in July 2021 GOM has represented to Steward (a) its willingness to operate going forward based on existing Concession terms (something which completely contradicts GOM’s public and private undertakings, as explained above) and (b) its rejection to agree to a new contractual framework. This “new contractual framework” was not only understood to be the basis of Steward consenting to the takeover from VGH, but was also represented by GOM to EUROSTAT in the year in which Steward agreed to take over (2018).

III.- Why the current terms of the Concession are inapt to allow the Concession to achieve its (GOM declared intended) purpose

- The Concession was presented to the Maltese people by GOM as a PPP. In one of the many available definitions of a PPP the *Public-Private Partnerships Reference Guide, V 2.0* (World Bank 2014), categorizes this instrument as follows:

“A long-term contract between a public party and a private party, for the development and/or management of a public asset or service, in which the private agent bears significant risk and management responsibility through the life of the contract, and remuneration is significantly linked to performance, and/or the demand or use of the asset or service”.



International

Steward Health Care International | Calle de Velázquez, 34, 28001 Madrid

T +34 9199 93370 | E info@stewardinternational.org | www.stewardinternational.org

- The Concession was structured such that the concessionaire was responsible for raising and providing the funds to develop the asset (that is, for design and construction through to completion of the asset). This was not meant to be a co-financed PPP scheme. The Concession tender involved the creation, by the successful bidder, of an SPV to deliver the project. The SPV was meant to be the channel of all cash flows inherent to the project. Assets and liabilities related to the project were expected to be recorded in the SPV balance sheet in what is commonly referred to as “ring-fencing” the cash flows.
- The Concession terms and effective date required that the funds to be applied to finance the project were a mix of debt and equity which is consistent with PPP structuring.
- Steward can confirm that evidence is available to the effect that (a) VGH had no equity or external financing to assume its undertakings under the Concession, (b) GOM agreed to waive over time this essential financing requirement, (c) the terms of the Transaction Agreements are not consistent with those of a ring fenced PPP in as much as, absent construction on the sites (unrealistic cost and medical tourism projections aside) no income can support the investment necessary to carry out the works.
- The ability of Steward to finance the Concession investment requirements depended on the undertaking of GOM to restructure the agreements. The existing contractual framework is unsuitable to operate the Concession on its terms. The main reason for this - questionable award considerations aside- is that the financial model is flawed. In essence:
 - the SCA redevelopment requirements include, amongst others, (i) the construction of a new hospital at GGH, (ii) the redesigning and remodelling the existing building at GGH plus redesigning and remodelling of the sites at KGH and SLH, (iii) the construction and outfitting of a medical school, (iv) the construction of a dedicated research and development centre and of a nursing university institution.
 - under the model, GOM undertakes to purchase the services of the healthcare provided by the Concessionaire throughout the duration of the concession (30 years). Beds, facilities, and services capacity not reserved for use by GOM can be offered by the Concessionaire for medical tourism.
 - medical tourism – if this was ever a realistic proposition- cannot materialize if construction of the sites is not achieved. Projections of income from medical tourism are in any event unrealistic (the PwC report based on the GOM submitted projections from VGH indicates that “[...] in 2022 -the so-called “stabilised



International

Steward Health Care International | Calle de Velázquez, 34, 28001 Madrid

T +34 9199 93370 | E info@stewardinternational.org | www.stewardinternational.org

year”- the Concessionaire is projected to generate revenues of c. Euros 67 million from medical tourism, increasing thereafter by inflation [...]”).

- before Steward took over from VGH (February 2018) no relevant construction had taken place, nor had any other capital expenditure yet been incurred. The construction milestones were then in breach and cannot be fulfilled if the agreements are not renegotiated.
- construction of the sites requires financing. Such financing is unavailable under the current financial model which was not and is not fit to generate the resources to make the concession bankable. As a matter of fact, the service payment scheme in the Concession is such that it will lead to financial losses immediately and to its end term, a circumstance of which GOM was aware of given the VGH financial advisor 's report from DWFF (and later PwC) was available to it.
- Bank financing is required to undertake construction cost is more than € 220,000,000.

IV.- Status of the Concession today

4.1 Milestones achieved to date

As operator of the Concession, Steward is currently running the Gozo General Hospital, St Luke's Hospital and the Karin Grech Rehabilitation Hospital and has completed a series of initiatives including redevelopment and refurbishment projects and extensive investment in plant and equipment. The value of these initiatives has been established independently by PwC at a value of around sixty million Euro (€ 60,000,000). All relevant details are available to GOM. We provide as **Annex II** a summary representation of investments to date undertaken by Steward since 2018.

The major construction project undertaken and completed by Steward was the building of Bart's Medical School, which was the most pressing milestone from GOM's perspective. This was inaugurated in November 2019 and is currently being used and operated by QMUL.

On the other hand, other major redevelopment works have stalled as explained above.

4.2 Deadlock by the parties

Following the failure to sign a proposed MoU in November 2019 (after months of negotiating with GOM and agreeing to an updated payment model under the existing framework) the then



International

Steward Health Care International | Calle de Velázquez, 34, 28001 Madrid

T +34 9199 93370 | E info@stewardinternational.org | www.stewardinternational.org

change in Prime Minister, and the first wave of the COVID pandemic, discussions with Government were resumed (we thought) in earnest, in July 2020 and over the subsequent months. A particularly intensive phase of discussions took place between mid-October 2020 and December 2020, leading to the preparation of near-final new agreements for remodelling of the Concessions, with 18th December 2020 being set as signing date for new agreements. Signing did not happen on that date or later in December even after obtaining Cabinet approval to that effect, essentially because GOM kept coming up with new procedural and/or other requirements prior to signature, such as the need for Department of Contracts approval, the requirement to justify the new agreements based on independent audit reports, etc. It is worth noting in this respect that the US Chargé d'Affairs had been invited to attend the signing ceremony of December 2020.

The only development of note following the failure to sign in December 2020 was the reaching of a settlement of claims which Steward had against GOM in terms of the interpretation and application of the HSDA and LSA agreements. The Parties had originally intended to submit these claims to arbitration, but a settlement contract was eventually prepared and signed on the 19th of February 2021.

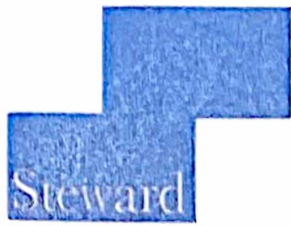
A fresh intensive round of discussions commenced in late April 2021, all throughout May and leading up to early June 2021. Once again, Steward and GOM were close to signing a set of agreements which would have seen the amicable termination of the existing Concession Agreements and payment of compensation to Steward for investment made to date through a Termination and Settlement Agreement (the "TSA") and the replacement of the existing Concession Agreements with the following new agreements:

- i. Hospital Management Services Agreement (the "MSA")
- ii. Design and Project Management Agreement ("DPMA")

The understanding during lengthy discussions was that for purposes of time, the TSA and the MSA would be signed together with a "head of terms" ("HoT") agreement which would eventually be replaced by the full-form DPMA. Suddenly, around the 4th June 2021, GOM changed its position, stating that it was not in favour of signing a HoT and that full and final agreements would need to be finalised and signed together, if necessary, later in June. This notwithstanding, GOM never resumed discussions. As explained above Steward has been informed that GOM is not willing to renegotiate the Concession in the near future and that the Concession should therefore resume as is.

V. Remedies available to the concessionaire

Over the past two years, but particularly since July 2020, Steward has been considering various remedies to address the issues it has been facing since the taking over of the Concession.



International

Steward Health Care International | Calle de Velázquez, 34, 28001 Madrid

T +34 9199 93370 | E info@stewardinternational.org | www.stewardinternational.org

5.1 Rectification of revenue model

This remedy would involve retaining the existing concession agreements, namely the Emphyteutical Deed, the Services Concession Agreement, the HSDA and the LSA, but amending them as necessary in order to change the current revenue model.

In this context, we submit to you the challenges (though we note that any challenge should be balanced against the risk of not acting) herein:

- In our view, amending the current concession, rather than starting on a fresh page could leave legacy issues. Indeed, the award, albeit not successfully challenged to date, has been the subject of a damning NAO report and, based on the analysis carried out herein, is clouded by several further concerns in relation to the basis upon it was granted and the subsequent actions by GOM in relation to VGH. The Concession is also being attacked in ongoing proceedings filed by the previous Leader of the Opposition.
- We understand that GOM had never guaranteed that the Concession would make a profit but only that Steward “*would be made whole*” as in fixing the model and in the interim assuming Steward costs. Amending the concession agreements in a way which would “guarantee” that Steward would make a profit could lead to a change in the nature of the contract from a “concession” to a “contract of services” with potential related procurement issues.

5.2 Restructuring of the Concession

Restructuring of the Concession is the approach which was favoured by GOM as a way of steering away from the original award, and discussions based on this model have been ongoing -as explained herein- since 2018, with particular intensity over the periods October to December 2020, and April to June 2021. Ample evidence of this is available.

As briefly explained earlier, the new model would be based on the following components:

- i. Termination of the Emphyteutical Deed, since GOM’s aim has been publicly expressed to be “taking back title” over the hospitals. This would need to be done through a public deed since it involves title to immovable property;



Steward Health Care International | Calle de Velázquez, 34, 28001 Madrid
T +34 9199 93370 | E info@stewardinternational.org | www.stewardinternational.org

International

- ii. Termination of the Transaction Agreements and payment of compensation to Steward *inter alia* as reimbursement for investment undertaken to date in connection with the Malta project. This was meant to be effected through the TSA *whose terms had been agreed to in a close-to-final version of the agreement first in December 2020 and subsequently in June 2021*;
- iii. Replacement of the present Concession Agreements with two new agreements:
 - a. A MSA, which would replace the current unwieldy SCA+LSA+HSDA set up and would see Steward continue in its role as operator of the hospitals without, however, holding a “title” over land. *A final but unexecuted version of this agreement had been prepared*;
 - b. A DPMA by virtue of which Steward would procure the design of the new hospitals and would subsequently act as project manager. Originally, Steward was meant to be the Contractor under a contract of works with a right to appoint subcontractors. However, following procurement concerns raised by GOM on the 18th of December, 2020, negotiations led down the route of a different model, with a contract of works replaced by the said DPMA.

In our view the restructuring approach has a number of advantages (assuming proper authorisations are obtained at GOM level) including:

- a. The fact that Steward would, upon signing, be compensated for investment made to date.
- b. The fact that the new agreements would signal a fresh start, and a break from the original concession award.

VI.- Concluding considerations

- Steward Health Care is one of the largest physician-led, privately held hospital operators and integrated health care providers in the World. We are a health care services organization committed to providing the highest quality of care in the communities where patients live. We operate over 40 community hospitals in different locations in the US and elsewhere. We are, and have always been, committed to quality and safety. We operate under the highest ethical standards.



Steward Health Care International | Calle de Velázquez, 34, 28001 Madrid

T +34 9199 93370 | E info@stewardinternational.org | www.stewardinternational.org

International

- We entered Malta taking over from VGH in February 2018 at your request and following the failure of VGH (and corresponding embarrassment to your Government) to honour the Concession terms. We did this in good faith and based on explicit assurances from GOM that the Concession will be restructured to make it bankable.
- Unless the Concession is restructured in any of the forms which have to date been explored it will not be possible to achieve your declared purpose and Concession requirement to, amongst other, construct/reconstruct and embellish the sites (GGH, SLH, KGRH).
- No financing is available in the market to undertake the investment required in the construction of the hospitals with the current cash flow model which, right from the beginning, was based on unrealistic (our even outrightly false) income assumptions and projections.
- We are keen to support healthcare in Malta and are committed to help as we have shown to date. However, we did not enter the Concession to be forced into the current position and therefore request that we conclude our latest negotiations (June 2021) as soon as possible and on mutually acceptable terms.
- There may be of course the alternative option to agree to terminate the Concession. If this is the way forward, we will provide our estimate of the termination compensation amounts.

We look forward to hearing from you.

Yours sincerely

Dr. Armin Ernst
President and CEO

Iñigo Gomez-Jordana
General Counsel



Steward Health Care International | Calle de Velázquez, 34, 28001 Madrid
T +34 9199 93370 | E info@stewardinternational.org | www.stewardinternational.org

International

CC:

Gwendolyn S. Green
Chargé d'Affaires a.i.
Embassy of the United States to Malta
VCRG+7P9, Attard,
Malta



International

Steward Health Care International | Calle de Velázquez, 34, 28001 Madrid

T +34 9199 93370 | E info@stewardinternational.org | www.stewardinternational.org

ANNEX I

European Commission "*Final Findings Eurostat EDP [Excessive Deficit Procedure] dialogue visit to Malta 31 May-1 June 2018*"



International

Steward Health Care International | Calle de Velázquez, 34, 28001 Madrid

T +34 9199 93370 | E info@stewardinternational.org | www.stewardinternational.org

ANNEX II

Certain improvements undertaken by Steward