

A review of the employment  
agreement of the Consultant  
to the Chief Executive Officer,  
Institute of Tourism Studies



November 2023



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Report by the Auditor General  
November 2023

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## List of Abbreviations

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ADPD	Alternattiva Demokratika Partit Demokratiku
AG	Auditor General
CEO	Chief Executive Officer
COO	Chief Operating Officer
DCS	Director Corporate Services
HR	human resources
IAID	Internal Audit and Investigations Department
IRU	Industrial Relations Unit
IT	information technology
ITS	Institute of Tourism Studies
MFIN	Ministry for Finance
MOT	Ministry for Tourism
NAO	National Audit Office
NCFHE	National Commission for Further and Higher Education
OPM	Office of the Prime Minister
PPS	Principal Permanent Secretary
PS	Permanent Secretary

# Executive Summary

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1. The National Audit Office (NAO) was requested to investigate whether the contract of employment entered into by the Institute of Tourism Studies (ITS) with the Honourable Rosianne Cutajar constituted misuse of public funds. This request, dated 28 March 2023, was made by the Chair, Alternattiva Demokratika Partit Demokratiku.
2. On 2 May 2019, a contract of employment was entered into between the Chief Executive Officer (CEO) ITS and the Hon. Cutajar, engaged as Consultant. In essence, the duties of the Consultant comprised providing strategic and operational support, establishing performance standards and indicators, acting as a representative of the Institute and facilitating stakeholder management, the drafting and reviewing of financial documents, and enforcing adherence to legal guidelines and internal policies. Hon. Cutajar resigned from her employment as Consultant on 13 January 2020 on her appointment as Parliamentary Secretary for Equality and Reforms. During her engagement as Consultant, Hon. Cutajar earned a gross income of €19,195.
3. The point of departure of the NAO's enquiry on the engagement of a consultant to the CEO ITS was whether the need for this employment was captured in any form. Despite the broad enquiries and the review of key documents by this Office, the need for this engagement could not be traced to any source. This need was not referred to in any strategic report, be it in annual reports drawn up by the Ministry for Tourism (MOT) and the ITS, or the Institute's strategy. Furthermore, the prospective employment of a consultant was not brought to the attention of the ITS Board of Governors, despite the obligation at law for its involvement in such matters. Of note to the NAO was that the Board regularly discussed HR-related matters; however, the consultant never featured in its deliberations. Graver still was that this position was not included in the ITS HR plan referred to the Board a few weeks after the Consultant had been engaged. Aside from concerns relating to the need for this engagement, the review of all ITS Board of Governors minutes revealed that the Consultant's existence and activity remained obscure to the Board throughout the period of her employment.
4. To justify the omission of the Board of Governors in the engagement of a consultant, the CEO ITS maintained that this was discussed by the Institute's Executive Management Office and supported this claim through reference to several reports highlighting the challenges faced by the Institute prior to 2015. The relevance of these reports was questioned by the NAO, as their link to the matter under review was deemed tenuous at best. This Office established that the employment of a consultant was not captured in any other meetings, correspondence exchanged or documentation generated by the ITS. The absolute dearth of any form of record relating to the need for this employment raises concerns on the validity of the basis of the engagement of the consultant and flouts the principles of good governance.

5. Another aspect enquired on by the NAO was whether the consultant's functions and duties were determined prior to engagement. Requested to disclose who was involved and how these were set, the CEO ITS indicated the role of the Institute's Executive Management Office in discussions intended to align the consultant's functions and duties with the ITS's priorities. Despite requests, no documentation evidencing these discussions was provided, rendering this process nebulous.
6. The NAO considered how the remuneration to be paid to the consultant was set. The CEO ITS indicated that this was established by the Institute's Executive Management Office and emphasised relativity to salaries of academic staff as a guiding principle in its determination. Nevertheless, this Office observed that no reference was made to the guidelines or regulations governing the setting of such pay, with the hourly rate payable to the consultant (€21.63 per hour) exceeding the threshold in force at the time (€18.59 per hour). Also of concern was the vagueness in responses received from the CEO ITS in relation to the setting of pay, who assigned collective responsibility to the Institute's Executive Management Office. Another element that drew the NAO's attention was the CEO's reference to a parliamentary question tabled 20 years earlier as the basis for setting pay, which was considered irrelevant. Consistent with most aspects of this employment, no documentation in support of that claimed by the CEO ITS in relation to the determination of the salary payable was made available. In sum, the NAO maintains that the basis for the remuneration payable to the consultant was obscure and unsound, and exceeded the threshold established in the relevant policy.
7. A crucial component of the NAO's review comprised the verification of whether the recruitment complied with applicable regulations. Recruitment by public sector entities is ordinarily governed by the Public Administration Act, particularly through Directive 7 and its amendments, and corresponding manuals of procedures appended therewith. By means of this Directive, the government delegated the authority to recruit to public sector entities, while simultaneously maintaining oversight through rigorous mechanisms of authorisation. Although the NAO established that Directive 7 applied to the recruitment of the consultant undertaken by the ITS, based on submissions by the Industrial Relations Unit and the Permanent Secretary MOT, this Office understood that the Institute did not adhere to the provisions established therein.
8. In justifying the departure from these provisions, the CEO ITS argued that the employment of a consultant was a politically sensitive role and urgently required, and therefore requested the guidance of the MOT. Expanding on the matter, the CEO ITS referred to a meeting held with the Chief of Staff to the Minister for Tourism in April 2019, during which the need and scope for the engagement of a consultant was discussed. According to the CEO ITS, it was on his initiative and through this intervention with the Chief of Staff that the employment of Hon. Cutajar ensued. Advised to await further instructions from the Chief of Staff, the CEO ITS indicated that he was later informed that after "consulting with the Ministry", Hon. Cutajar was deemed the idoneous candidate. According to the CEO ITS, in line with the decision by the MOT, he contacted Hon. Cutajar to discuss the offer of employment, which was accepted. The NAO was not provided with records of these crucial initial exchanges.

9. The CEO ITS indicated that, following guidance sought from the Chief of Staff to the Minister for Tourism, the latter provided the CEO with a draft position of trust contract. This and subsequent exchanges between the two reinforced the understanding of the CEO ITS that the engagement of Hon. Cutajar as Consultant was to be on a position of trust basis. Given this understanding, the NAO sought to determine whether this employment conformed with the policies and procedures governing the engagement of individuals on a trust basis. Key in this regard was the 'Policy on the Engagement of Persons/Positions on a Trust Basis', issued by the Office of the Prime Minister on 7 July 2017, which consolidated previous policy directions concerning the engagement of staff on a trust basis.
10. The NAO concluded that the recruitment of the Consultant was in breach of the policies and procedures regulating the employment of individuals on a person or position of trust basis. While the policy permitted the ITS to engage an advisor to assist on managerial, technical and/or ancillary issues, several requirements intended to safeguard governance were stipulated. As regards the authorisation of such employment, the ITS failed to refer the engagement of the Consultant to the Permanent Secretary MOT, which endorsement was to be the first in a sequence of authorisations necessary for the Institute to validate its recruitment. In addition, the ITS did not submit the supporting documentation required in terms of the policy necessary in justifying the necessity to recruit the Consultant. Further breached by the Institute was the obligation to report the employment to several authorities, namely, the Office of the Prime Minister, the Ministry for Finance and the NAO.
11. Presented with the myriad aspects of non-adherence to the policies and procedures applicable to recruitment on a trust basis, the CEO ITS stated that he was not aware of these requirements, indicated that they were not brought to his attention by the Chief of Staff to the Minister for Tourism, and maintained that he had no prior experience of such employment. Nonetheless, this Office disagreed with the arguments put forward by the CEO ITS, for the ITS was the employer of the Consultant and it was the Institute's responsibility to ensure that this employment was undertaken in line with relevant policies and procedures.
12. The Chief of Staff to the Minister for Tourism refuted that stated by the CEO ITS regarding the MOT's decision that Hon. Cutajar was "in their opinion an idoneous candidate", maintaining that while he did not recall the precise exchanges, the input of the Minister's Secretariat did not extend "beyond a mere notification of the vacancy to a candidate, or a potential candidate to the employer." Moreover, the Chief of Staff argued that he was unaware that Hon. Cutajar was employed on a trust basis and reiterated that he had no involvement in this engagement. This version of events contrasted with that asserted by the CEO ITS, who affirmed that it was the Chief of Staff who referred Hon. Cutajar for appointment as Consultant in a specific and direct manner. Moreover, it was contradicted by the email submitted by the Chief of Staff to the CEO ITS, wherein direct reference was made to the engagement of Hon. Cutajar. According to the Consultant, in 2019, she was approached by the Chief of Staff to the Minister for Tourism who indicated that the ITS required someone to assist the CEO and that she was being nominated for this position.



13. The dissonant perspectives of the CEO ITS and the Chief of Staff to the Minister for Tourism instil doubt as to the veracity of their assertions, with the NAO dubious of the responsibility shouldered by the former and the limited involvement claimed by the latter. Compounding matters and reinforcing the NAO's unease was the vacuous recollection of the Minister for Tourism, which limited this Office's attempts at establishing facts. Nevertheless, the failures in authorisation, substantiation and reporting arise from the ITS's bypassing of all regulations that ought to have ensured proper oversight and governance of employment through public funds and consequently elicit the NAO's concerns. In conclusion, the NAO established that the employment of the Consultant breached all regulations governing recruitment, be it in terms of ordinary public sector employment or in terms of individuals engaged on a trust basis.
14. The agreement regulating the employment of Hon. Cutajar as Consultant was entered into on 2 May 2019. Several sources of evidence indicated that the contract was backdated. The draft contracts of employment referred to the CEO ITS by the Chief of Staff to the Minister for Tourism on 13 May 2019 and 5 June 2019 constituted one source of evidence. Another source was the payment of significant arrears in the first salary paid to Hon. Cutajar, which corresponded to the period 16 July 2019 to 12 August 2019. The third source of evidence was a chat with a third party, timestamped 11 July 2019, wherein Hon. Cutajar referred to her engagement with the ITS as a development that was yet to happen. This information was in the public domain. Although the CEO ITS and the Consultant sought to explain these anomalies, the convergence of the multiple sources of evidence amplifies the NAO's concerns that the contract of employment was backdated by at least one month and therefore irregular. The parties were aware that the date cited was incorrect and misrepresentative, evidenced no less by correspondence, salary-related documentation and chats with a third party as detailed. While the financial beneficiary of this breach was Hon. Cutajar, this was facilitated and rendered possible by the actions of the CEO ITS when consenting to the disbursement of public funds he was duty bound to safeguard.
15. Another aspect of analysis undertaken by the NAO was whether the Consultant possessed the necessary credentials and experience to execute the duties stipulated in the contract of employment. The main aspects of her employment entailed providing strategic and operational support, acting as a representative of the Institute and aiding with stakeholder management, drafting and reviewing financial documents, establishing performance standards and indicators, and ensuring the Institute's adherence in terms of legality and ethical conduct. This Office acknowledges that Hon. Cutajar's professional and political experience aligned with certain aspects of her role as Consultant. However, of concern to the NAO was Hon. Cutajar's responsibility to draft and review financial documents and to ensure the ITS's adherence to legal and ethical requirements, aspects of work for which Hon. Cutajar had no evident expertise.

16. Several concerns emerge in terms of the implementation of the duties assigned to the Consultant. The first relates to the incongruence between the urgency initially cited to engage an individual who enjoyed the MOT's trust in view of the sensitive work to be undertaken on the ITS's strategy, and the role of mere coordination between stakeholders involved in the strategy that was actually assigned. The second matter that drew the NAO's attention was the lengthy period required for familiarisation, which was deemed anomalous by this Office in view of the expertise cited as basis for the engagement of Hon. Cutajar. The third concern related to the technical nature of certain duties that were not within the expertise of the Consultant. While the NAO acknowledges the contention by the CEO ITS and the Consultant, that the list of duties was drafted as wide as possible to allow for flexibility, this Office maintains that the assignment of duties beyond the competencies of Hon. Cutajar rendered this argument flawed.
17. In sum, based on the submissions by the ITS and Hon. Cutajar, the evidence of work carried out by the Consultant over a period of approximately eight months consisted of screenshots of the calendar event of two meetings organised by the CEO ITS, the referral of the Institute's organisational chart, and journal entries of another ITS official corresponding to four meetings. While the NAO concedes that certain duties and functions may not necessarily result in documentation, generally, knowledge-based work generates ample evidence of activity, be it in the form of correspondence, reports being drawn or reviewed, and records of events and meetings attended. In the case of the Consultant, the dearth of evidence casts doubt on what work was carried out. When seen in the context of earlier points raised by this Office regarding the irregular nature of this employment, the poor output, if any, of the Consultant aggravates concerns of negligence in the disbursement of public funds by all involved in this contrived engagement.
18. The NAO established that payments made were in accordance with that stipulated in the contract of employment. Between 2 May 2019 and 13 January 2020, the date of resignation of Hon. Cutajar from her employment as Consultant, a gross salary of €19,195 was paid. Aside from her engagement with the ITS, in 2019, Hon. Cutajar earned income of €43,777 from her role as Commissioner for Simplification and Reduction of Bureaucracy and €26,165 as a Member of Parliament. Aggregated with the €18,190 earned in 2019 as Consultant, the gross earnings of Hon. Cutajar amounted to €88,132. This income exceeded the €74,000 declared by Hon. Cutajar by €14,132.

# Chapter 1 | Allegations of misuse of public funds by the Chief Executive Officer of the Institute of Tourism Studies through the fabricated employment of a Member of Parliament

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## 1.1 A request to audit

- 1.1.1 On 28 March 2023, Mr Carmel Cacopardo, Chair of the Alternattiva Demokratika Partit Demokratiku (ADPD) submitted correspondence to the Auditor General (AG) requesting that the National Audit Office (NAO) investigate the contract of employment entered into by the Institute of Tourism Studies (ITS) with the Honourable Rosianne Cutajar, to determine whether this engagement constituted misuse of public funds.
- 1.1.2 Providing further details, the Chair ADPD referred to the contract between the Chief Executive Officer (CEO) ITS and Hon. Cutajar, as Consultant to the CEO ITS (hereinafter referred to as Consultant), which was effective 2 May 2019. The Chair ADPD cited press coverage on the matter dated 23 March 2023, which emerged following a request made in terms of the Freedom of Information Act.
- 1.1.3 Annexed to the correspondence submitted to the AG was the contract of employment. According to the Chair ADPD, the Consultant was engaged to provide services primarily related to the financial administration of the ITS, notwithstanding that it was common knowledge that the Consultant was a teacher of Italian who had no competence in the areas of finance for which she was engaged. The Chair ADPD contended that this contract served to fabricate an employment intended to facilitate the disbursement of public funds for reasons other than those set.

## 1.2 An element of context

- 1.2.1 The context to the correspondence submitted by the Chair ADPD to the AG warrants an element of explanation. The first direct reference in the press to the contract of employment between the CEO ITS and the Consultant was made on 23 March 2023. Cited in this article were a series of chats between the Consultant and a third party, made public in a blog a few days earlier. Of note in these chats was that stated by the Consultant in reference to her engagement with the ITS, wherein she indicated that she no longer cared and was to be engaged as a consultant to the CEO ITS and earn another salary.<sup>1</sup> Concern was raised regarding the possible backdating

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<sup>1</sup> The NAO is aware that the chats were subject to a Court-imposed ban of publication and therefore limited reporting to press coverage on the matter deemed essential to provide context.

of the contract of employment dated 2 May 2019, given that this statement was timestamped to 11 July 2019.

1.2.2 In the article, reference was also made to the other government posts held by the Consultant, namely her employment with the Office of the Prime Minister (OPM) and her role as a Member of Parliament. Earnings from these government engagements totalled €75,000 annually.

1.2.3 Appended to the article was the contract of employment. Highlighted in this respect was that the contract of employment was for a three-year period, with remuneration set at €27,000 annually for 24 hours of work a week. Concerns were raised regarding the tasks assigned, primarily financial and operational in nature, and whether the Consultant had the required competence, since she was a teacher of Italian by profession.

1.2.4 Other articles on the matter were subsequently published. Several points of reporting emerged. Noted was that the Consultant did not list the earnings from her employment with the ITS in her financial declaration to Parliament for 2019. Attention was drawn to Parliament's code of ethics, which stipulated that Members of Parliament were to declare their work or profession and if employed, the identity of the employer. Also noted was that the Consultant failed to declare income from her engagement with the ITS in the declaration of income that ministers and parliamentary secretaries are obligated to submit to Cabinet.

1.2.5 Additional coverage focused on the role of the CEO ITS in this employment. Queried by the press, the CEO ITS could not explain how the Consultant was recruited and whether she performed any work. Nonetheless, according to other sources cited, the Consultant's role at the ITS was practically non-existent.

1.2.6 The political fallout resulting from these and other developments led to the resignation of Hon. Cutajar from the Labour Party parliamentary group on 3 April 2023. Nevertheless, she retained her seat in Parliament.

### 1.3 Setting the terms of reference

1.3.1 On 13 April 2023, the NAO followed up this request through a meeting with the Chair ADPD. In view of the information provided, the AG informed the Chair ADPD that the NAO would be undertaking the audit.

1.3.2 Following a preliminary review of the facts of the case, the NAO set the following terms of reference as the basis of the audit:

- a. determine whether the engagement of the Consultant was justified and appropriately undertaken; and

- b. ascertain whether the provisions stipulated in the employment agreement were complied with.

## **1.4 Methodological considerations**

1.4.1 This audit was conducted in accordance with Article 9(a) of the First Schedule of the Auditor General and National Audit Office Act (Act XVI, 1997) and in terms of practices adopted by the NAO. As part of its audit, the NAO reviewed the:

- a. Institute of Tourism Studies Act (Chapter 566), which establishes the parameters and procedures that the Institute was to adhere to in its recruitment;
- b. Public Administration Act (Chapter 595), which creates the framework for the issuance of directives by the Principal Permanent Secretary (PPS), with one such directive delegating the responsibility for recruitment to public sector entities;
- c. Standards in Public Life Act (Chapter 570), which regulates the submission of declarations of assets by Members of Parliament; and
- d. House of Representatives (Privileges and Powers) Ordinance (Chapter 113), which regulation sets the Code of Ethics for Members of the House of Representatives.

1.4.2 Findings presented in this report are based on the documents submitted to the NAO in response to requests for information. The primary stakeholder in this audit was the ITS, with queries addressed thereto corresponding to the Institute's role in the engagement of the Consultant and it being the recipient of the services rendered. The cooperation of the CEO ITS is acknowledged in this respect. Another stakeholder was the Ministry for Tourism (MOT), given its role of oversight in respect of the ITS and the involvement of the then Chief of Staff to the Minister for Tourism in the identification of the Consultant. Of concern to the NAO was that the Chief of Staff offered limited cooperation to this Office, failing to respond to crucial questions posed regarding the employment of Hon. Cutajar as Consultant and obscuring the role of the Ministry in this process. Furthermore, although Dr Konrad Mizzi, then Minister for Tourism, replied to enquiries made by the NAO regarding this employment, his response provided no understanding or insight. The limited disclosures by the Minister for Tourism and his Chief of Staff hindered the NAO from establishing their precise role and the extent of their involvement in the engagement of Hon. Cutajar as Consultant.

1.4.3 Enquiries were also made with:

- a. the Cabinet Office within the OPM and the Office of the Clerk of the House of Representatives in respect of declarations regarding assets and income submitted by the Consultant in her capacity as a Member of Parliament;
- b. the OPM, in view of the reporting obligations arising from the employment of the Consultant and other positions held within government;
- c. the Ministry for Finance (MFIN), in terms of referral of the relevant contract of engagement; and
- d. internally, within the NAO, in respect of this Office's role as a recipient of contracts of employment within government.

1.4.4 Aside from documentation reviewed, in line with established procedures, the NAO held an interview, taken under oath, with the CEO ITS, owing to his direct involvement in this contract of employment. The interview was transcribed by the NAO and a copy submitted to the interviewee, who was requested to endorse the transcript and submit clarifications, if required. This Office also sought to meet with Hon. Cutajar; however, citing personal circumstances, she declined to meet in person or online, and requested that the relevant queries be submitted in writing. While conceding to this request, the NAO indicated that this format of evidence collection was not in line with the Office's standard practices and far from ideal given the centrality of Hon. Cutajar in this case.

1.4.5 Unless otherwise indicated, public officers cited are referred to by their designation at the time being reported on.

1.4.6 In line with its guiding principles of independence, fairness and objectivity, the NAO sought to ensure that the matter brought to its attention was duly scrutinised and the resultant findings objectively reported on. The relevant documentation and information required were, in most cases and to the best of the NAO's knowledge, made available to this Office by the various parties. The NAO's findings and conclusions are based solely and exclusively on the evaluation of such documentation and information supplied, and the evidence at its disposal. The NAO sought to identify any possible shortcoming or irregularity in the use of public funds.

## Chapter 2 | The employment of the Consultant to the Chief Executive Officer of the Institute of Tourism Studies was illegitimate, in breach of regulations and its backdating irregular

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### **2.1 The need for the engagement of a consultant to the Chief Executive Officer has no form and leaves no traces**

2.1.1 The first aspect of review undertaken by the NAO was that of determining whether the need for the engagement of a consultant to the CEO ITS was documented. In the case under review, the Consultant was engaged in May 2019. Therefore, this Office reviewed key documents that preceded this date to identify any reference to the need for this recruitment.

#### **Need for a consultant not captured in any strategic report**

2.1.2 The NAO reviewed the annual reports compiled by the MOT for 2018 and 2019. Although reference was made to the ITS, this mainly related to the relocation of its campus, matters of academia and the introduction of information technology (IT) systems. The need to strengthen the Institute's executive was not indicated.

2.1.3 Another key document reviewed by the NAO was the 'Institute of Tourism Studies Strategic Report 2015-2020'. While the ITS strategy highlighted the necessity to fill several vacant posts, no reference was made to the need to strengthen the office of the CEO or to engage a consultant within this office.

2.1.4 In addition, the NAO sought to determine whether this need for a consultant to assist the CEO ITS was captured in the Institute's annual reports of 2018 and 2019. In submissions to this Office, the CEO ITS indicated that the Institute did not compile annual reports but instead referred to the internal quality assurance audit reports drawn up for each academic year. The NAO reviewed the reports corresponding to 2018/2019 and 2019/2020 and found no reference to the need to engage a consultant, or any other position relating thereto, to aid the CEO ITS.

#### **Need for a consultant not referred to the Institute for Tourism Studies Board of Governors**

2.1.5 Another avenue explored by the NAO was whether the matter was referred to the ITS Board of Governors. The NAO established that the need to engage a consultant to assist the CEO ITS was not brought to the attention of the Board. Nevertheless, key points of interest emerge from this Office's review of the minutes of meetings held by the Institute's Board of Governors in 2019.

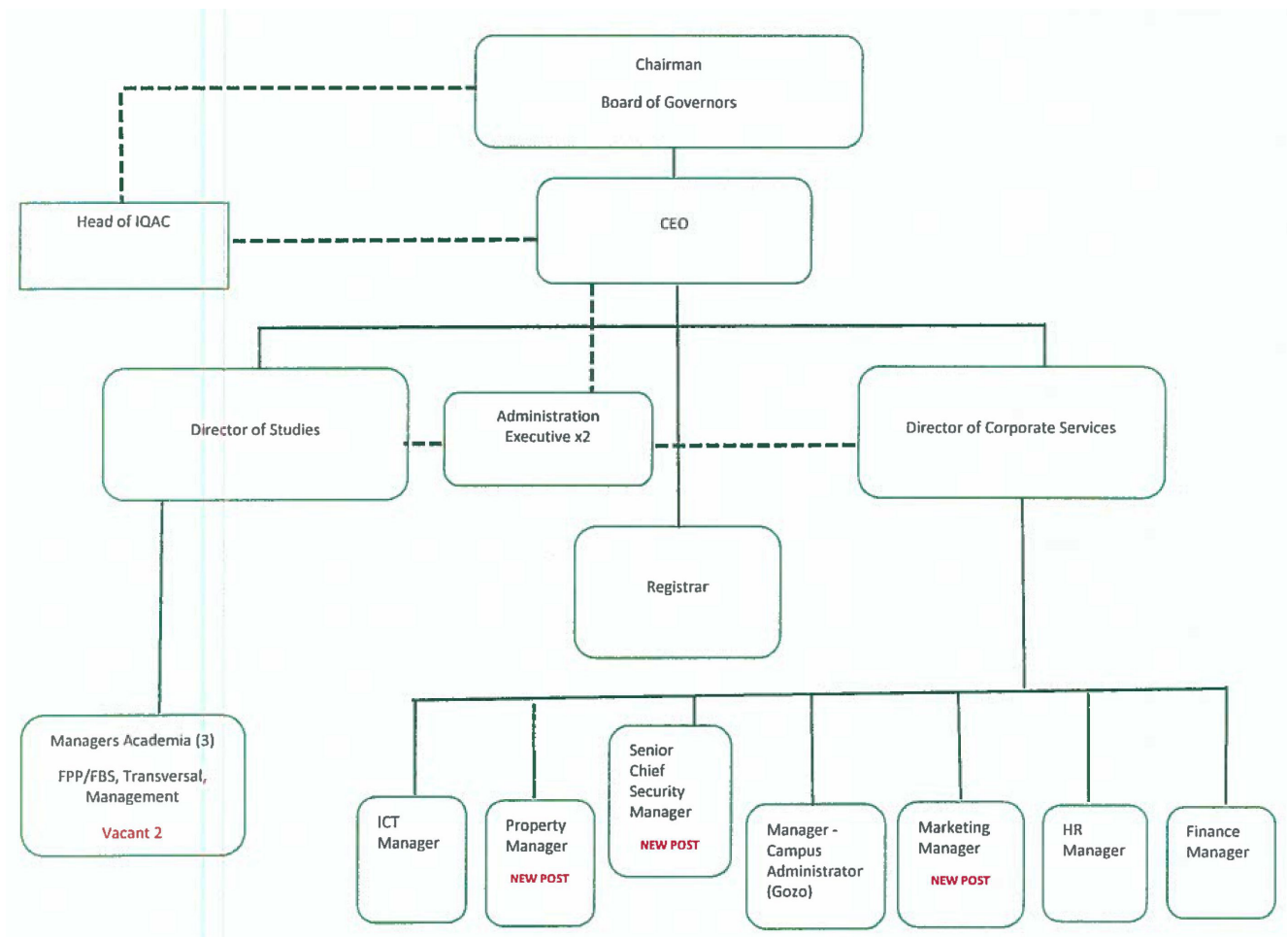
- 2.1.6 The first meeting of the ITS Board of Governors in 2019 was held on 17 January 2019. Among other matters discussed during this meeting were several human resources (HR)-related issues, primarily concerning the promotion of staff and instances of disciplinary proceedings. The NAO noted that the Board regularly discussed matters relating to HR over the period reviewed; however, none of the issues raised related to the need to engage a consultant to aid the CEO ITS or referred to this role in any manner.
- 2.1.7 Noted in the minutes of the ITS Board of Governors meeting of 17 January 2019 was the appointment of several boards and committees. Cited in this respect were the Internal Quality Assurance Committee, the Board of Studies, the Programme Quality Validation Board, the Examination and Dissertation Board, and several others. The Director Corporate Services (DCS) ITS proposed the setting up of a Policy and Procedures Committee; however, the Board of Governors agreed that this matter would be discussed in its subsequent meeting.
- 2.1.8 The ITS Board of Governors reconvened on 12 March 2019. Aside from other matters discussed during this meeting, the CEO ITS reiterated the setting up of a committee tasked with the systematic review of policies and procedures. The proposed members were the Director of Studies, the DCS, the Cost Controller and the Head of Department responsible for the policy and procedure being discussed. The committee was to be chaired by a member of the Board of Governors who was to be appointed by the Chair of the Board. The constitution and composition of the committee was approved by the ITS Board of Governors.
- 2.1.9 In submissions to the NAO, seeking to justify the need to engage a consultant, the CEO ITS referred to the task of revising all policies and procedures, the Institute’s strategy and its organisational structure as evidence of the requirement of this engagement. The CEO ITS highlighted how the matter concerning the review of the Institute’s policies and procedures had been referred to and approved by the Board of Governors. Notwithstanding that stated by the CEO ITS, this Office remains sceptical as to the involvement of the Consultant in this process, for the committee as proposed to and endorsed by the ITS Board of Governors specified the officials tasked with responsibility for this review, yet the Consultant was not cited in this regard, despite the proximity of her eventual appointment to the meeting within which the setting up of this committee was discussed. Graver still was that, according to the ‘Internal Quality Assurance Audit Report: Academic Year 2019-2020’, the ITS commenced its review of policies and procedures in November 2020, that is, ten months after the resignation of the Consultant.
- 2.1.10 The subsequent meeting held by the ITS Board of Governors was that of 17 May 2019, at which point the Consultant had already been employed for around two weeks. Of particular interest to the NAO was that during this meeting, the CEO ITS brought to the attention of the Board a new HR plan, which was referred for approval. The organisational structure referred to the Board by the CEO ITS included new proposed posts and others that were vacant at the time. Following review and feedback provided, the ITS Board of Governors approved the organisational structure.



2.1.11 Referral of the HR plan for the approval of the ITS Board of Governors emanates from provisions stipulated in the Institute of Tourism Studies Act (Chapter 566), which regulates the operations of the ITS. In terms of the Act, the Board was charged with acquiring, administering, and controlling the resources, facilities and property of the Institute, including the procurement and utilisation of resources for the running of the ITS and any of its branches. Further specified was that the Board was to distribute between the departments and branches within the ITS the resources available to it by way of funds, premises, facilities, services, equipment, and persons.

2.1.12 Of concern to this Office was that the post of consultant to the CEO ITS was not included as part of the HR plan referred to the ITS Board of Governors, despite that the CEO ITS ought to have been aware of the Consultant’s engagement given that this had happened two weeks prior and that the Consultant reported directly to him (Figure 1 refers). Aggravating matters was that the failure to refer this engagement to the Board breached the provisions of the Institute of Tourism Studies Act and infringed on the functions of the Board. In submissions to the NAO, the CEO ITS maintained that the organisational structure reflected the Institute’s setup as endorsed by the OPM and assumed that individuals engaged on a trust basis were not to be included.

Figure 1 | HR plan referred to the ITS Board of Governors on 17 May 2019



2.1.13 Following the meeting held on 17 May 2019, until year end the ITS Board of Governors met on 24 July 2019, 21 August 2019, and 1 November 2019. No reference to the engagement of the Consultant was made in any of the meetings held post May 2019, that is, after her employment with the Institute. When queried, the CEO ITS confirmed the NAO's understanding that the need to employ the Consultant was not referred to the Board. The CEO ITS sought to justify this omission by emphasising that, primarily, the individual to be engaged was to be someone who had the trust of the MOT.

### A checklist of irrelevant audit reports

2.1.14 While the CEO ITS conceded that the engagement of a consultant within his office was not referred to the Board of Governors, he maintained that the need for assistance with the anticipated increase in workload was discussed by the Institute's Executive Management Office. According to the Institute of Tourism Studies Act (Chapter 566), this Office constituted the CEO ITS, the DCS and the Director of Studies, on an ex officio capacity. According to the CEO ITS, the consultant's engagement was to be on a position of trust basis, since the employee engaged was to be assigned work in relation to strategic planning deriving from the Government's manifesto and political agenda. In this context, the CEO ITS noted that the person to be appointed was to be endorsed by the MOT.

2.1.15 In support of that stated, the CEO ITS referred to several reports that highlighted the challenging period faced by the Institute prior to 2015. The reports cited were the:

- a. 'Report by the Auditor General – Public Accounts 2002';
- b. 'Food and Beverage Procurement at ITS' drawn up by the Internal Audit and Investigations Department (IAID) in 2012;
- c. 'Information Technology Audit – Institute of Tourism Studies' published by the NAO in July 2013; and
- d. 'External Quality Assurance Audit Report – Institute of Tourism Studies' by the National Commission for Further and Higher Education (NCFHE), which review was undertaken in May 2015.

2.1.16 The CEO ITS contended that the numerous shortcomings highlighted in these reports were severely curtailing the Institute's operations and were detrimental to its credibility and its students. According to the CEO ITS, the address of these shortcomings and the further development of the Institute were embodied in its 2015-2020 strategic plan. Also noted was the challenge of migrating the ITS's campus from Pembroke to the temporary facility made available in Luqa in 2018. The CEO ITS maintained that in light of these challenges and to ensure the long-term viability of the Institute, there was a need to employ an external resource,

independent of the Institute, to assist him with the preliminary work required in terms of the next strategic plan.

- 2.1.17 Elaborating on the matter, the CEO ITS deemed the engagement of a consultant as justifiable for several reasons. First, an external consultant provided objectivity by providing an unbiased perspective on how the ITS could identify areas for improvement and make informed decisions that aligned with the Institute's goals and objectives. Second, the CEO ITS argued that engaging a consultant could help build the Institute's capacity by working closely with the CEO and other key stakeholders, and through the sharing of knowledge and best practices that could be adopted. In terms of stakeholder engagement, a consultant could facilitate the national consultation process for the subsequent strategic plan, ensuring that the views and opinions of stakeholders, including the government, industry partners and the public, were effectively incorporated into the plan. Finally, the CEO ITS noted that an external consultant could help the ITS address the issues highlighted in the various audits undertaken and ensure that the necessary measures were taken to improve the Institute's operations and governance.
- 2.1.18 The NAO sought to verify that asserted by the CEO ITS through the review of the reports cited. The first report referred to was that published by the NAO in 2003, titled 'Report by the Auditor General – Public Accounts 2002'. The report comprised a series of compliance audits, one of which related to the ITS. The audit focused on two elements. The first related to the learning resource centre, catering equipment and other inventory, with the main finding being the lack of accurate records. The second focused on revenue, expenditure and miscellaneous matters, with deficiencies noted in the way expenditure was being registered and stores run. The NAO deemed reference to this report as irrelevant, for the matters audited bore no connection to the strategic role envisaged for the consultant to the CEO ITS. Moreover, the significant lapse of time added a further layer of irrelevance for the context within which the report was written had since changed.
- 2.1.19 The second report cited by the CEO ITS was that prepared by the IAID in October 2012, titled 'Food and Beverage Procurement at ITS'. The report delved into the controls exercised by the ITS over the procurement of food and beverages. The IAID deemed these to be inadequate, highlighting deficiencies relating to the lack of segregation of duties, inappropriate record-keeping, deficiencies in securing value for money, waste, and loss of revenue. Given that the focus of the IAID report was on shortcomings relating to procurement procedures and controls, the NAO deemed reference to this report as tangential to the role of the consultant to the CEO ITS.
- 2.1.20 Another report referred to by the CEO ITS was the 'Information Technology Audit – Institute of Tourism Studies' published by the NAO in July 2013. This audit examined the Institute's IT operations and focused on how the ITS was managing its IT resources in terms of hardware and software applications, network infrastructure and supplier management. Again, the NAO deemed reference to this report as entirely irrelevant to the engagement of a consultant to the

CEO ITS. The IT audit report referred was technical in nature, and although a recommendation for recruitment was made, this was directed towards the engagement of a head of IT.

2.1.21 The final report highlighted by the CEO ITS was the ‘External Quality Assurance Audit Report – Institute of Tourism Studies’, which review was undertaken by the NCFHE in May 2015. In essence, the review was intended to ascertain whether the ITS had internal quality assurance processes that were fit for purpose and effective. The report drawn up by the NCFHE highlighted several shortcomings relating to the Institute’s quality assurance function. The review undertaken was wide-ranging and addressed various facets of the ITS’s operations, all in relation to quality assurance. Scope for improvement was noted in many respects, including the filling of key posts. In its response to the NCFHE, the ITS acknowledged the need to improve elements of its functioning. More central to this audit was that the ITS highlighted the drive to fill key positions within the Institute. However, of note to the NAO was that a consultant to the CEO ITS was not one of these positions.

2.1.22 In addition to these audits, the CEO ITS submitted an internal quality assurance audit report corresponding to the academic year 2017/2018 compiled by the Institute. As background, the CEO ITS explained that another external quality assurance audit was to be undertaken in 2020, following that of 2015. For this reason, an annual self-assessment review was introduced in 2018, intended to aid the ITS Executive Management Office to monitor progress registered and identify areas where additional work was required to reach the required standard. The internal quality assurance audit report was structured around these standards, whereby the ITS was provided with an overview of where the Institute stood in terms of progress realised and recommended a way forward to secure further achievements. Although this report coincided with the period of interest of the NAO’s audit, this Office noted that specified therein was that the CEO ITS was primarily assisted by the Director of Studies and the DCS. Again, no reference was made to the Consultant.

2.1.23 Aside from reference to the above-cited reports, whose relevance to the need to engage a consultant was deemed tenuous at best by the NAO, this Office requested any minutes of meetings other than those of the ITS Board of Governors, records of correspondence exchanged or any other documentation that captured the need for this employment. In reply, the CEO ITS reiterated the importance of implementing changes recommended in these reports. However, of concern to the NAO was that no record relating to the need to engage a consultant was provided. This vacuum of documentation reinforces this Office’s concerns regarding the validity of that stated by the CEO ITS and the basis of the subsequent engagement of the consultant.

## 2.2 Prior to engagement, the consultant’s functions and duties were nebulous

2.2.1 The NAO sought to determine whether the functions and duties of the consultant to be engaged to assist the CEO ITS were established. This Office specifically enquired with the ITS as to who was involved in setting these functions and duties and how these were arrived at.

According to the CEO ITS, the functions and duties of the consultant were determined by the ITS Executive Management Office through a technical approach that involved comprehensive regular discussions. These discussions focused on the development of the scope of work of the consultant as aligned with the Institute's priorities for the following months. This process ensured that the consultant's engagement was strategically designed to effectively support the ITS in addressing its challenges and achieving its deliverables.

2.2.2 In view of that stated by the CEO ITS, the NAO requested any records retained by the Institute in support of that stated regarding the functions and duties of the consultant. In response, the CEO ITS reiterated that this was part of the daily discussions held by the Institute's Executive Management Office. Despite the NAO's request, no documentation evidencing the discussion or consideration of the functions and duties of the consultant to the CEO ITS was submitted, casting doubt on that stated by the CEO ITS.

### **2.3 The basis for remuneration set remained obscure and unsound, with the rate payable exceeding established thresholds**

2.3.1 Another aspect relating to the engagement of a consultant to the CEO ITS enquired on by the NAO related to the remuneration set. This Office requested information on who determined the remuneration to be paid and the regulations or guidelines that applied in this respect.

2.3.2 In response, the CEO ITS indicated that when determining the remuneration payable to the consultant, it was agreed that this should not exceed that paid to the Institute's academic staff. The rate payable to the ITS's academic staff was that of €26 per hour; therefore, it was decided that the consultant's hourly rate be fixed at €21.63. Elaborating in this respect, the CEO ITS noted that the rate set could not be benchmarked against previous engagements for the Institute did not retain such records. Constrained to rely on information in the public domain, the CEO ITS referred to a reply to a parliamentary question tabled in 1999. The CEO ITS noted that at the time a consultant was paid an hourly rate of €10.50, whereas a lecturer was paid €8.15, the latter approximately 80 per cent of the former. According to the CEO ITS, the Institute's Executive Management Office deemed it appropriate to invert this proportion, resulting in a rate payable to a consultant that was equivalent to 80 per cent of the €26 rate payable to lecturers, that is €21.63 per hour.

2.3.3 Several points of concern emerge in this respect. First is that no reference was made to any guidelines or regulations governing such payments that ought to have guided the ITS when determining the hourly rate payable. The applicable policy regulating remuneration payable to consultants and advisors established the highest payable rate in 2017 as €37,194 for a 40-hour week. Adjusted to 2019, this threshold increased to €38,660, implying an hourly rate of €18.59. Evident is that the hourly rate of €21.63 as set by the CEO ITS exceeded the maximum established in the policy. Second, despite prompts by the NAO, the CEO ITS remained vague regarding who was responsible for determining such remuneration, attributing this decision to the collective ITS

Executive Management Office. Third, the CEO ITS referred to a reply to a parliamentary question of 20 years prior as the basis for decision-making, which reference was deemed irrelevant by this Office. Finally, as with all aspects of this engagement, no documentation substantiating that claimed by the CEO ITS regarding the setting of remuneration payable to the consultant was submitted.

## 2.4 The engagement of the Consultant was in breach of all regulations governing recruitment

2.4.1 The NAO's attention was next directed to whether the engagement of the Consultant was in line with applicable regulations. This process of verification must be seen in the context where the need for this recruitment was not captured in any form, be it through referral to the Institute's Board of Governors or in any report compiled, where the functions and duties that were to be assumed remained unformulated, and where the basis of remuneration was ambiguous. These factors assume relevance for fundamental points of reference that ought to have been registered prior to the commencement of the recruitment process were missing.

### Recruitment did not adhere to the provisions regulating employment with public sector entities

2.4.2 The Public Administration Act (Chapter 595) provides for the values that are to guide the public administration and its organisation and management. The Act defines public administration as comprising the ministries and departments of government, specialised units, agencies and entities. The ITS falls within the definition of a 'government entity', that is, "... an organisation, not being a government department, specialised unit, a government agency or a commercial partnership, in which Government has a controlling interest, whether or not such organisation is established by law". The Public Administration Act empowers the PPS to issue directives on any matter relating to the organisation and management of the public service.

2.4.3 Of relevance to the matter under review is Directive 7, titled 'Delegation of Authority to Recruit in the Public Sector Entities' and issued by the PPS on 23 January 2014. Through this Directive, the government delegated the authority to recruit when filling a position that already existed within the entity, which process was subject to the approval of the relevant permanent secretary (PS). Attached to Directive 7 was the 'Manual for Public Sector Entities: Delegation of Recruitment Approval'. This Manual regulated the delegated approval for recruitment.

2.4.4 Directive 7 was subsequently amended by Directive 7.1 on 6 May 2017. The key development in this Directive was that public sector entities were empowered to effect recruitment and promotions subject to two approvals. First, was that of the People & Standards Division within the OPM, insofar as the grading and salary structure was concerned. Second, was that of MFIN, in respect of the relevant HR plan and budget containment. In the case of recruitment, the approval of the relevant PS was to be obtained. A revised manual was attached to Directive 7.1.

- 2.4.5 Another amendment was made through Directive 7.2, issued on 1 June 2018. Among other matters addressed, this Directive emphasised the importance of the submission of HR plans to a committee within the OPM and highlighted how these were to be centrally coordinated, scrutinised and approved.
- 2.4.6 Central to understanding the implementation of the Directives was the Manual issued therewith. The amendments to Directive 7 resulted in the periodic revision of this Manual, with the NAO basing its analysis on the version dated February 2019 and titled 'Manual for Public Sector Entities: Delegation of Authority to effect Recruitment, Promotions and Industrial Relations'. Noted in the Manual was that it was applicable to all public sector entities set up by the Government, implying its relevance to the ITS. This understanding is strengthened when one considers the entities specifically excluded on grounds that their recruitment processes were already decentralised. Although the ITS was included in this list, the exclusion only applied to academic staff, implying that the recruitment of non-academic staff fell within the provisions of this Manual.
- 2.4.7 Emphasised in the Manual was that, when recruiting from outside a public entity, recruitment was to be effected through an external call for an existing position falling into one of the following categories:
- a. to replace someone in the same position and with the same conditions, resulting in no increase in headcount and expenditure;
  - b. to fill a position that was not a replacement, even if this constituted an increase in headcount; or
  - c. to fill a position that was not a replacement, even if this was not regulated by a collective agreement and/or by the grading and salary structure approved by the Industrial Relations Unit (IRU) but for which ad hoc approval was obtained from the Unit for the financial package attached to such position, even if this constituted an increase in headcount.

Regardless, the approval of the pertinent PS was required.

- 2.4.8 Of note to the NAO was the emphasis made in the Manual that public sector entities were not to create position-designations that were not covered by a collective agreement and/or by the grading and salary structure approved by the IRU and the prior approval of the relevant PS.
- 2.4.9 The Manual provided for instances when its applicability was not compulsory. One scenario outlined in this respect was when the entity had not budgeted correctly or not at all for the recruitment, thereby necessitating the approval of the PS and that of MFIN for the allocation of additional funds. Another scenario envisaged was when the vacancy in concern comprised the payment of ad hoc allowances not covered by a collective agreement and/or by the grading

and salary structure approved by the IRU. In such instances, the entity was to seek the Unit's approval for the required ad hoc allowances. In both scenarios, if approved, the entity was to follow the procedure specified in the Manual for the filling of the position.

2.4.10 The procedures outlined in the 'Manual for Public Sector Entities: Delegation of Authority to effect Recruitment, Promotions and Industrial Relations' were consistent with the provisions stipulated in several legislation. Among these were the Constitution of Malta, the Public Administration Act (Chapter 595), the Employment and Training Services Act (Chapter 343), and the Employment and Industrial Relations Act (Chapter 452). Nevertheless, the Manual provided for entities regulated by enabling legislation, which legal framework determined the functions and powers of the entity, including recruitment.

2.4.11 Relevant to the context of this audit was the Institute of Tourism Studies Act (Chapter 566). Article 18 of the Act stipulates that the "Appointment of all staff with formal and regular duties shall be made by the Chief Executive Officer and the Board of Governors shall be kept aware of any new recruit." Aside from this provision, the Act made no reference to the regulation of recruitment. Consequently, the NAO understood that recruitment by the ITS was governed by Directive 7 and its subsequent amendments.

2.4.12 At a more granular and case-specific level of analysis, the NAO directed attention to the review of the ITS's recruitment policies. Relevant in this respect were two policies, namely, 'P018 Recruitment Policy – Administrative Staff' and 'P039 Recruitment Policy & Procedure – Academic Staff'. Given that the post of consultant to the CEO ITS was not an academic grade, this Office excluded the applicability of the latter policy. The NAO deemed the policy regulating the recruitment of the Institute's administrative staff as more fitting in the case of this engagement. However, this Office established that these policies came into effect in February 2021, that is, after the period of interest covered by the audit. Although the policies did not apply at the time of the engagement of a consultant to the CEO ITS, a review of these policies indicated that they effectively mirrored the provisions of the 'Manual for Public Sector Entities: Delegation of Authority to effect Recruitment, Promotions and Industrial Relations'. This alignment strengthened the NAO's understanding as to the applicability of the Manual to recruitment undertaken by the ITS.

2.4.13 Having established the applicability of Directive 7 and the procedures established in its corresponding Manual, the NAO enquired with the IRU and the PS MOT, it being the Institute's line ministry, whether the ITS sought their approval prior to the recruitment of a consultant to the Institute's CEO. Based on submissions made by the IRU, the NAO understood that the approval of the Unit was not sought for the engagement of a consultant to the CEO ITS. In turn, the PS MOT informed the NAO that he could trace no correspondence that suggested that the ITS sought his authorisation for the engagement of a consultant. Elaborating, the PS MOT stated that the engagement of persons with public entities is regulated through open recruitment procedures. Other than that, the only means for engagement are on a person or position of



trust basis, which are permissible for specific and justified reasons and require the approval of the relative PS and minister; as a policy consultant or advisor with the minister, which requires the approval of the OPM; or through a contract for service, which would trigger procurement procedures.

- 2.4.14 When considering Directive 7 and the relevant Manual, and that stated by the IRU and the PS MOT, the NAO established that the conditions regulating recruitment stipulated therein were not adhered to by the ITS when engaging a consultant to aid the Institute's CEO.

**Neither did recruitment adhere with the policies and procedures governing engagement on a person or position of trust basis**

- 2.4.15 The NAO sought the perspective of the CEO ITS regarding any authorisation sought for the engagement of a consultant. The CEO ITS acknowledged that the Institute ordinarily recruited employees in line with its collective agreements for academic and non-academic staff, and in terms of Directive 7 for managerial grades, through processes subject to the scrutiny of the PS MOT and the OPM. However, the CEO ITS conceded that the engagement of a consultant was different in that this was a new role and therefore sought the guidance of the MOT.

- 2.4.16 The CEO ITS presented different reasons in support of this departure from standard procedures. Cited as a reason in this respect was the urgency of the main task to be assigned to the consultant, that is, work on the next strategic plan of the ITS. Furthermore, the CEO ITS maintained that since the consultant was to be directly involved in sensitive matters, again referring to the development of the Institute's strategic plan, the Executive Management Office agreed that the chosen candidate was to have the MOT's unequivocal trust. Of note to the NAO were later submissions by the CEO ITS, where the role of the consultant in relation to the strategy changed substantially, from involvement in its development to one of coordination among the stakeholders involved. In fact, the development of the ITS's strategy was contracted to BEAT Ltd in February 2020, following enquiries made in October 2019. BEAT Ltd structured its involvement around four phases, that is, external analysis, internal analysis, engagement, and strategy and roadmap. The cost of this engagement was €46,256.

- 2.4.17 Elaborating, the CEO ITS indicated that, in April 2019, a meeting was held with the Chief of Staff to the Minister for Tourism, wherein the need and scope for the engagement of a consultant to the Institute's CEO was discussed. The CEO ITS emphasised that it was on his initiative and through this intervention with the Chief of Staff that the eventual employment of Hon. Cutajar as Consultant would occur. The Chief of Staff instructed the CEO ITS to await further instructions. According to the CEO ITS, the Chief of Staff informed him that, after "consulting with the Ministry", Hon. Cutajar was deemed the idoneous candidate and provided him with her contact details. In line with the decision by the MOT, the CEO ITS personally contacted Hon. Cutajar to discuss the offer of employment. This offer was duly accepted. No records of these exchanges were provided to the NAO as the CEO ITS indicated that these were made over the phone.

2.4.18 Following these developments, the CEO ITS sought the guidance of the Chief of Staff to the Minister for Tourism regarding the employment contract that was to apply. The Chief of Staff provided the CEO ITS with a draft position of trust contract on 13 May 2019. A draft of the contract of employment was submitted by the Chief of Staff to the CEO ITS on 5 June 2019. Pertinent to note was that the attachment to this email, that is, the draft contract of employment, was titled 'Contract R Cutajar', thereby indicating the Chief of Staff's awareness of the intended employment of Hon. Cutajar. According to the CEO ITS, a meeting was held with Hon. Cutajar on this date to discuss the way forward regarding her engagement as consultant. The only evidence of this meeting provided by the CEO ITS was a screenshot of the calendar invite sent to Hon. Cutajar. In terms of the remuneration payable, the CEO ITS emphasised with the NAO that the Executive Management Office removed several allowances that were standard for such appointments, including a communication allowance, a fully expensed car allowance and a performance bonus.

2.4.19 Given that asserted by the CEO ITS, that the consultant was to be engaged on a position of trust basis, the NAO sought to ascertain whether the engagement was in line with policies and procedures governing recruitment on a trust basis applicable at the time. The key document against which this Office verified matters was that titled 'Policy on the Engagement of Persons/ Positions on a Trust Basis', issued by the OPM on 7 July 2017. The objective of this policy was to streamline and consolidate previous policy directions concerning the engagement of staff on a trust basis. A distinction was drawn whether the individual was being engaged from outside or within the Public Administration, classified as a 'person of trust' or 'position of trust', respectively.

2.4.20 Cited in the Policy was that ministries could request the engagement of persons/positions of trust to fulfil any of the following functions:

- a. policy consultants, responsible for the provision of political and strategic advice, which designation formed part of the Strategic & Priorities Unit within a ministry;
- b. advisors, to provide advice on managerial, technical and/or ancillary functions;
- c. secretariat staff, to serve in the private secretariat of ministries, parliamentary secretaries and other designated offices; or
- d. other specific positions, for technical and/or ancillary functions.

2.4.21 By way of further elaboration, noted in the Policy was that advisors and other specific positions were attached to departments and units within line ministries, based on their expertise and experience in a particular field. The financial package for advisors was to be within the same parameters as those applicable to policy consultants, as regulated by the relevant annex in the Policy<sup>2</sup>, while the remuneration of other specific positions was regulated according to the

<sup>2</sup> #lasijiet lil Policy Consultants f'Ministeri – Linji Gwida July 2017

government salary scales and related financial benefits, as the case may be. According to the Policy, secretariat staff were regulated by the Manual of Cabinet Procedures. Also noted was that the role and duties of policy consultants and advisors were to be purely advisory and did not entail executive powers.

- 2.4.22 The NAO observed that the role of the consultant to the CEO ITS more appropriately fits under the designation of ‘advisor’ as defined in the Policy, be it in terms of form and substance. As regards the element of form, although the designation was termed ‘consultant’, this was deemed a misnomer by the NAO, for consultants as conceptualised in the Policy were to provide political and strategic advice under the aegis of a Strategic & Priorities Unit within a ministry, which was not the case in the engagement of Hon. Cutajar. Moreover, the Policy stipulated that it was advisors that were attached to departments and units within line ministries, as was the case with the employment of the consultant by the ITS. In terms of substance, the nature of the duties assigned to Hon. Cutajar aligned with those of an advisor, that is, to provide advice on managerial, technical and/or ancillary functions based on expertise and experience in a particular field. It is within this context that the NAO deemed the engagement of the consultant to the CEO ITS as falling within the classification of that of an advisor, rather than that of a policy consultant. The relevance of this classification is that, in each case, different procedures for approval applied.
- 2.4.23 Based on this understanding, of relevance to the NAO’s enquiry was that the Policy outlined the process that was to be followed when engaging individuals on a trust basis to serve as advisors. Stipulated in the Policy was that requests by line ministries for the engagement of individuals as an advisor on a person of trust basis, or in a position of trust, were to be made by the line PS, endorsed by the respective minister and referred for the approval of the PPS. In the case of engagement as a person of trust, the approval of the Prime Minister was also required.
- 2.4.24 The Policy established an extensive list of supporting documents that were to be submitted with requests for engagement on a trust basis, highlighting that such employment was to be “strongly justified”. Aside from the respective minister’s and PS’s endorsement, documentation requested in this respect included: the basis of justification; the duly completed request form; confirmation of adherence with relevant provisions relating to the definite nature of the employment, the remuneration set and the availability of funds; a job description and key performance indicators; and a curriculum vitae.
- 2.4.25 According to the Policy governing the engagement of persons and positions of trust, on communication of approval or otherwise to the PS concerned, the ministry’s director responsible for corporate services was to notify the individual and raise the required contract of service on the basis of the specimen contract provided in the Policy. Stipulated was that contracts of engagement were to be referred to: the contractee; the Director (Management Support) at the OPM; the Director (Tax Audits) within MFIN; the Director (Human Resources Management Systems) at the OPM; and the Auditor General.

2.4.26 Another aspect addressed in the Policy was that individuals engaged on a person or position of trust basis in a full-time capacity could hold a second contract on a trust basis, subject that this was part-time. This arrangement was permissible insofar as the established hours of work did not conflict and the duties remained distinct. Stipulated in the Policy was that PSs were responsible to ensure that new definite contracts entered into after the coming into force of the Policy were to be conformant therewith. Failure to draw up and align contracts accordingly could render the said contract null and void for administrative purposes and personal liability for any damages arising as a consequence were to be borne by the PS.

2.4.27 Having established the policies and procedures that were to regulate engagement on a trust basis, the NAO sought to determine whether these provisions were adhered to by the ITS when engaging a consultant to the Institute's CEO. Applying the Policy to the context under review, the request for the engagement of a consultant to the CEO ITS, given its alignment with the engagement of an advisor, ought to have been made by the PS MOT, this in view of the MOT being the line ministry of the Institute. Such a request should have been endorsed by the Minister for Tourism and referred to the PPS for authorisation. As indicated earlier, the PS MOT maintained that no correspondence could be traced as evidence that the ITS sought his authorisation for the engagement of a consultant. That stated by the PS MOT resonated with the testimony of the CEO ITS, who indicated that the Chief of Staff to the Minister for Tourism acted as the interlocutor in the process, with referral to the PS MOT therefore bypassed.

2.4.28 In view of that stated by the CEO ITS and the PS MOT, the NAO directed its attention to the involvement of the Chief of Staff to the Minister for Tourism. Requested to confirm that stated by the CEO ITS – that the Chief of Staff had informed the Institute that Hon. Cutajar was “in their opinion an idoneous candidate” – the Chief of Staff maintained that he did not remember the specifics of any exchange relating to Hon. Cutajar. Nonetheless, according to the Chief of Staff, generally, when the Minister's Secretariat was “aware of vacancies, whether at public or private entities, candidates with potentially matching requisites would be identified. At no stage would the Ministry intervene in the candidate selection or recruitment process, beyond a mere notification of the vacancy to a candidate, or a potential candidate to the employer.” This assertion by the Chief of Staff contrasted with that stated by the CEO ITS, who maintained that it was the Chief of Staff who referred Hon. Cutajar for appointment as Consultant in a specific and direct manner.

2.4.29 The NAO also sought the perspective of the Consultant in terms of her initial point of contact regarding this employment. In submissions to this Office, the Consultant indicated that, in 2019, she was approached by the Chief of Staff to the Minister for Tourism who indicated that the ITS required someone to assist the CEO. According to the Consultant, the Chief of Staff informed her that he was nominating her for this position. The Consultant expressed interest in the appointment and, on requesting further information, was referred to the CEO ITS.

- 2.4.30 Given the incongruity between that stated by the CEO ITS and the Chief of Staff to the Minister for Tourism, the NAO sought further clarifications from the latter. In essence, this Office enquired whether the Chief of Staff was aware of the applicable policies and procedures governing the engagement of individuals on a person or position of trust basis; consulted with and sought the authorisation of the Minister for Tourism on the nomination of Hon. Cutajar; and referred the nomination of Hon. Cutajar to the PS MOT. In submissions to the NAO, the Chief of Staff indicated that he was not aware that Hon. Cutajar was engaged on a trust basis and further affirmed that he had no role in this engagement. The Chief of Staff reiterated that he did not nominate Hon. Cutajar but solely put her name forward as a candidate for consideration in view of the vacant position brought to his attention by the CEO ITS. Moreover, the Chief of Staff recalled being requested to provide a template agreement to the ITS. In terms of consultation with and the authorisation of the Minister for Tourism, and referral to the PS MOT, the Chief of Staff indicated that, to his knowledge, the Minister and the PS MOT were not involved. The Chief of Staff noted that the recruiting entity was expected to follow applicable engagement procedures and maintained that he had no visibility in this respect beyond that described.
- 2.4.31 Similar enquiries were made by the NAO with the Minister for Tourism. In essence, this Office sought to ascertain the extent of awareness and involvement of the Minister in the employment of Hon. Cutajar as Consultant. In a terse reply, the Minister for Tourism maintained that he had no recollection of any involvement in the matter. The scant information provided by the Minister for Tourism severely limited this Office's understanding of developments leading to the engagement of a Member of Parliament by an entity subsidiary to the MOT. The conflicting accounts provided by the CEO ITS and the Minister's Chief of Staff aggravate the lack of input on the part of the Minister for Tourism.
- 2.4.32 Considering the conflicting accounts provided by the CEO ITS and the Chief of Staff to the Minister for Tourism, the bypassing of the PS MOT, and the failure to recollect any information by the Minister for Tourism, the NAO sought further understanding regarding the endorsement of the engagement of Hon. Cutajar on a trust basis from the PPS. In its submissions, the OPM stated that, in line with the policy regulating persons of trust, including Policy Consultants, the OPM did not and did not need to receive a copy of the contract of Hon. Cutajar. Furthermore, only contracts for public employees offered positions of trust required the authorisation of the OPM. Reiterating concerns regarding the classification of the employment of Hon. Cutajar as a policy consultant, the NAO sought further information from the OPM had the engagement been deemed as that of advisor. The OPM maintained that it had no visibility that this contract was referred to the Office of the PPS.
- 2.4.33 Although the policy for the engagement of individuals on a person or position of trust basis applicable at the time emphasised the requirement for a strong justification to support such recruitment and stipulated an extensive list of documents that were to be submitted in support of such requests, in this case, the NAO was not provided with any documents evidencing compliance with the policy.

2.4.34 Another requirement outlined in the policy was that, once entered into, the contract of engagement was to be referred to particular offices within the OPM, MFIN and the NAO. Queried in this respect, all confirmed that no such referral was made.

2.4.35 Based on that reviewed, the NAO concluded that the recruitment of the Consultant did not adhere to the policies and procedures governing the engagement of individuals on a person or position of trust basis. Although the applicable policy allowed the ITS to engage an advisor to provide advice on managerial, technical and/or ancillary functions, the policy also stipulated several requirements that were to be followed to ensure proper governance. As regards the sanctioning of such engagement, the ITS failed to refer the employment of the Consultant to the PS MOT, the first in a series of authorisations that were required. Furthermore, the ITS did not comply with the obligations set out in the policy for the submission of supporting documentation evidencing the need for the recruitment of the Consultant. Also breached by the Institute were the reporting obligations arising following engagement, with the OPM, MFIN and the NAO not notified of the employment of the Consultant.

2.4.36 When the several instances of non-adherence to the policies and procedures that were to be followed in the case of recruitment on a trust basis were highlighted by the NAO, the CEO ITS indicated that he was not aware of these requirements, that the Chief of Staff to the Minister for Tourism did not bring these to his attention, and that he had no prior experience (or post for that matter) of employment on such basis. Attempts by the CEO ITS to shift responsibility for non-adherence to these requirements were dismissed by the NAO since, ultimately, the ITS was the employer of the Consultant and therefore it was the Institute's responsibility to ensure adherence with relevance policies and procedures.

2.4.37 The contrasting and conflicting perspectives of the CEO ITS and the Chief of Staff to the Minister for Tourism raise doubt as to the veracity of their assertions. The NAO remains sceptic of the onus assumed by the CEO ITS and the minor role claimed by the Chief of Staff. Aggravating the NAO's concerns was the Minister for Tourism's failure to recollect any information in relation to his involvement in the matter, thereby limiting this Office's efforts at determining the extent and nature of the Ministry's involvement. Regardless, the NAO's reservations emerge when considering the breaches in authorisation, substantiation and reporting that arose from the ITS's sidestepping of all provisions intended to ensure proper oversight and governance of employment, thereby safeguarding public funds.

## 2.5 While a contract of employment was signed between the parties, its backdating was irregular

2.5.1 An agreement regulating the employment of Hon. Cutajar as Consultant was entered into on 2 May 2019. Aside from Hon. Cutajar, the other signatory to the contract was the CEO ITS.

- 2.5.2 The employment was for a definite term of three years, commencing on the date of signing, and was subject to a probationary period of one year. Also noted in the contract was that 12 months prior to the expiry of any current term, the parties were to discuss its renewal, and if the ITS did not give notice of its intention not to renew 10 months prior to the lapse, the contract was to be deemed to be extended for a further 12 months, under the same terms and conditions. Although this implied that the contract could continue to be renewed, it could never become indefinite in nature, for article 7.4 of Legal Notice 452.81 applied, which specified that an objective reason existed for the retention of the employee on a fixed term contract beyond four years.
- 2.5.3 The annual basic salary payable to the Consultant was of €27,000, which amount did not include the statutory bonuses. Any cost-of-living increases announced by the Government were to apply cumulatively throughout the term of the contract.
- 2.5.4 Noted in the contract of employment was that the Consultant was employed on a minimum 24 hours per week and was to ensure that she delivered the service in such a manner as to properly execute the functions and duties of the post. The Consultant was to manage and control, generally, the operations and business of the ITS as assigned by the Institute's CEO. A list of duties was appended to the contract. These comprised:
- a. helping and advising the CEO in directing the ITS in keeping with its outlined vision;
  - b. representing the ITS as required, including attendance of important functions, industry events and public meetings;
  - c. working closely with the CEO and directors to prepare annual budgets, and any potential projects which may arise;
  - d. overseeing quality control throughout the ITS through the establishment of goals;
  - e. assisting the CEO in day-to-day decisions;
  - f. developing the right framework and systems to report on progress achieved on each program and project and ensure the development of the appropriate key performance indicators and targets to monitor outcomes;
  - g. overseeing all operations and business activities to ensure they produce the desired results and are consistent with the overall strategy and mission;
  - h. building relations of trust with key partners and stakeholders and acting as a point of contact for important shareholders;

- i. leading and motivating subordinates to advance employee engagement and develop a high performing managerial team;
- j. maintaining a deep knowledge of the markets and industry;
- k. reviewing financial and non-financial reports to devise solutions or improvements;
- l. enforcing adherence to legal guidelines and in-house policies to maintain the ITS's legality and operational ethics; and
- m. analysing problematic situations and occurrences and providing solutions to ensure growth.

2.5.5 In the execution of these duties, the Consultant was to report directly to the CEO ITS.

2.5.6 The Consultant was entitled to all vacation leave as regulated by law, which was to be utilised during the year it was due unless prior authorisation to carry forward was obtained. In addition, the Consultant was entitled to sick leave in line with legislative provisions, with the ITS reserving the right to request certification by a doctor of its choice. Special leave could also be availed of according to law.

2.5.7 Also stipulated in the contract of employment were the policies that the Consultant was to abide by. Included as an addendum to the contract were requirements concerning the protection and use of information, conflict of interest, the transaction of business and data protection. The Consultant was bound to maintain full confidentiality as to any business information acquired in any manner during employment. Furthermore, the Consultant was not to disclose any business information to any third party or use this for any purpose other than that deemed legitimate by the ITS. The Consultant was not to remove from the ITS's premises any copy or document or any other object that could contain business information without prior authorisation. Any tangible object in possession of the Consultant containing business information owned by the ITS was to be returned to the Institute on termination of employment. The ITS could also request the deletion of all business information in the Consultant's possession. Business information was defined as all information relating to the business activity of the ITS.

2.5.8 Unless prior written permission was obtained from the ITS, the Consultant could not hold any material interest in any person, firm or company that was in competition with the Institute, or which could impair the Consultant's ability to always act in the best interest of the ITS. The Consultant could not accept gifts from any supplier clients or business associated with the ITS unless the gifts were seasonal or of low value. However, if refusal could be construed as causing offence, then the Consultant was bound to seek the advice of the Chair ITS to avoid compromising the interests of the Institute. Moreover, the Consultant was to always conduct business on behalf of the ITS in a transparent and honest manner and could not offer gifts or favours intended to compromise the integrity of the recipient. The giving of seasonal and other



gifts was permissible if made in the ordinary course of business. Nonetheless, the Chair ITS was to be consulted in situations that required a gesture of appreciation to avoid compromising the interests of the Institute.

- 2.5.9 As regards Internet use, the Consultant was to take reasonable care to ensure that the ITS's systems were not compromised. Specified was that the Consultant's use of the Internet was to be limited to work-related duties, and while use could be made in personal time, such use was to be in line with these provisions. The Consultant was not to download material from the Internet that was not connected to her engagement. While email facilities could be used for personal messages, such use was not to compromise the interests of the ITS. The Institute retained the right to view or delete material, without the knowledge of the Consultant, of any email and Internet traffic.
- 2.5.10 The Consultant acknowledged that the ITS could take disciplinary action or seek damages against her should she act in breach of the policies regulating confidentiality, conflict of interest, the transaction of business and Internet use.
- 2.5.11 Noted in the contract of employment was that the Consultant could be required to travel on business from time to time. The ITS was to reimburse any such expenses incurred. Simultaneously acknowledged was that the Consultant was to travel in business class or equivalent and be accommodated in similar fashion. Also stipulated was that the Consultant was to maintain a high standard of dress and personal appearance.
- 2.5.12 The contract of employment could be terminated by the ITS if there was any good or sufficient cause for termination and in the case of proved non-performance or breach of this agreement on the part of the Consultant.
- 2.5.13 The Consultant was expected to conform to the highest level of discipline and performance. In this context, the ITS had the right to suspend the Consultant, or put her on half pay if a need to investigate any breach of discipline arose. Such investigation was to be concluded within two months and was to commence immediately. At the end of this period, the ITS was to either charge the Consultant or exonerate and have her reinstated and refunded unpaid amounts. If the Consultant was under investigation by the Police or charged pending trial for any offence directly or indirectly connected with her duties, then the ITS could, at its sole discretion, suspend the employee or put her on half pay pending the definite outcome of the investigation, or initiate internal disciplinary proceedings. If definite guilt is found for an offence punishable with imprisonment, this would constitute good and sufficient cause for summary termination of employment without the necessity of disciplinary proceedings.
- 2.5.14 Included in the contract of employment were other provisions relating to other aspects regulating the Consultant's employment. Noted in this respect was that all notices were to be given in writing and delivered personally or through registered mail. Furthermore, no amendment could

be made to the terms of the contract unless executed in writing by the parties, and if any part of the contract became invalid, void or unenforceable, all remaining parts were to remain in full force and effect and were in no way to be invalidated, impaired or affected thereby.

2.5.15 While the NAO established that the engagement of the Consultant fell foul of the policies and procedures intended to regulate such recruitment, graver still were concerns that emerged when considering the chronology of events leading to the engagement of Hon. Cutajar. Pertinent to recall is that the contract of employment entered into between the CEO ITS and the Consultant was dated 2 May 2019. The CEO ITS maintained that he discussed the engagement of a consultant with the Chief of Staff to the Minister for Tourism and met Hon. Cutajar in April 2019, yet provided no documentation corresponding to these developments. That stated by the CEO ITS regarding the initial meeting held in April 2019 was corroborated by the Consultant; yet, again, no documentation to substantiate that stated was provided. On the other hand, the NAO reviewed correspondence submitted to the CEO ITS by the Chief of Staff wherein a draft position of trust contract for the engagement of the Consultant was provided. Of concern was that this correspondence was exchanged on 13 May 2019, that is, two weeks after the date cited on the contract of employment. Aggravating matters were later exchanges between the Chief of Staff and the CEO ITS, for on 5 June 2019, the former submitted a draft of the Consultant's contract of employment. The CEO ITS confirmed that subsequent to this exchange, he met with Hon. Cutajar to discuss the way forward regarding the latter's engagement with the Institute. The exchange of the draft contract of employment and the meeting held on 5 June 2019 intensify and validate concerns relating to the backdating of the contract of employment. Another element of corroboration was the settlement of substantial arrears paid in the first salary payment made by the ITS to the Consultant, corresponding to the period 16 July 2019 to 12 August 2019. While the payment of arrears resonates with the backdating of the contract of employment, the ITS maintained that initial attempts to obtain payroll-related data from Hon. Cutajar commenced on 19 June 2019, with information provided on 11 July 2019.

2.5.16 Aside from evidence sourced from the CEO ITS was information in the public domain that inferred the backdating of the Consultant's contract of employment. In a chat with a third party, timestamped 11 July 2019, Hon. Cutajar referred to her engagement with the ITS wherein she indicated that she was to be employed as a consultant to the Institute's CEO, an assertion that was worded in a manner that implied that the employment was yet to happen. The relevance of this information is that it strengthens this Office's understanding of the backdating of the contract of employment, with evidence to this effect sourced directly from both parties to the contract. Presented with this anomaly, the CEO ITS stated that he was incensed with Hon. Cutajar's remark for she was aware that she was already in employment with the Institute given their earlier meetings.

2.5.17 The anomaly of that stated by the Consultant regarding her prospective employment with the Institute and the fact that two months had already elapsed from the contract of employment was brought to her attention. In reply to the query raised by the NAO, the Consultant was uncertain

as to why she referred to this employment as an event yet to happen for she acknowledged that preparatory work had already started in May 2019. The Consultant noted that this was said in haste and in a moment of anger. According to the Consultant, the gist of that stated was that there were several persons who simultaneously earned income from different entities and that she had no reason to be ashamed of or shy away from new opportunities of employment.

2.5.18 Queried further on the apparent backdating of the contract of employment, the Consultant maintained that she first met the CEO ITS in April 2019, utilised May 2019 as a period for familiarisation with the organisational structure of the Institute and researching other international educational systems. This was followed by a meeting with the CEO ITS and his assistants in June 2019.

2.5.19 The version of events as presented by the CEO ITS was mirrored by the Consultant, capturing all interactions between the parties in a synchronised manner, although no documentation to substantiate that claimed was provided. Complicating matters was the unwillingness of the Consultant to meet with the NAO, in person or online, citing personal reasons and agreeing to provide responses to queries raised in writing. This curtailment in cooperation created the risk of witnesses coordinating their responses, rendering it impossible for the NAO to distinguish between corroboration that implied veracity and corroboration that was the result of collusive action. Notwithstanding that stated by the CEO ITS and the Consultant, the NAO's concerns regarding the backdating of the latter's contract of employment persist, rendering entry into the contract of employment at least a month prior to the actual engagement fraudulent. The date cited in the contract was known to be incorrect and misrepresentative by the parties to the contract, evidenced no less by correspondence, salary-related documentation and chats with a third party as detailed. The financial beneficiary of this irregularity was Hon. Cutajar; however, the deceit was abetted through the actions of the CEO ITS when agreeing to the disbursement of public funds he was responsible for administering.

## **2.6 The misalignment between the Consultant's competence and duties casts doubt on the rationale and basis of her employment**

2.6.1 The NAO sought to determine whether the Consultant had the required credentials and the necessary experience to satisfactorily fulfil her role. Fundamental in this respect were the duties stipulated in the Consultant's contract of employment. The main aspects of the Consultant's role entailed providing strategic and operational support, acting as a representative of the Institute and aiding with stakeholder management, drafting and reviewing financial documents, establishing performance standards and indicators, and ensuring the Institute's adherence in terms of legality and ethical conduct.

- 2.6.2 In submissions to the NAO, the CEO ITS stated that the Institute was committed to devise a strategic plan for the period 2021-2025 and therefore sought to engage a consultant to assist in this process. According to the CEO ITS, the consultant was to have the following competencies:
- a. knowledge of the Maltese education system;
  - b. proof of education advocacy among the public;
  - c. knowledge of public sector administrative procedures; and
  - d. knowledge of the Government’s electoral manifesto, particularly in relation to education.

2.6.3 The CEO ITS informed the NAO that these requisites were discussed by the Institute’s Executive Management Office, with the outcome of these discussions subsequently communicated to the Chief of Staff to the Minister for Tourism. In view of that stated, this Office requested records retained by the ITS Executive Management Office capturing discussions relating to the engagement of the Consultant and any correspondence or documents exchanged with the MOT. The CEO ITS did not provide the NAO with any records evidencing the discussions held internally by the Institute or externally with the MOT. However, he maintained that the matter of the Consultant’s engagement was discussed during regular meetings held with the Chief of Staff wherein the Institute’s objectives and how these were to be achieved were addressed. Elaborating in this respect, the CEO ITS asserted that he discussed the requirements relating to the engagement of the consultant, on which the Chief of Staff acted accordingly, recommending Hon. Cutajar as an idoneous candidate for the role.

2.6.4 Given the nomination of Hon. Cutajar as Consultant, the NAO enquired as to how the ITS ensured that she had the required credentials and experience. The CEO ITS maintained that Hon. Cutajar fulfilled all the criteria set by the Institute in terms of her employment as Consultant. In support of that claimed, the CEO ITS referred to Hon. Cutajar’s involvement in 2017 in discussions and consultations on quality education in relation to the socio-economic elements of Maltese families and on the conditions of educators and school senior management teams. In addition, the CEO ITS referred to Hon. Cutajar’s role as Chair of Education within the Nisa Laburisti organisation, where she advocated access to education for all. Furthermore, the CEO ITS indicated Hon. Cutajar’s involvement in the development of the Government’s electoral manifesto and noted that she was well-versed in high-level administrative procedures given her employment as a public officer. Notwithstanding the request by the NAO, no documentation substantiating that argued by the CEO ITS was made available by the Institute, with the CEO contending that proof of Hon. Cutajar’s credentials and experience was in the public domain.

- 2.6.5 In considering the claims of the CEO ITS in respect of Hon. Cutajar, the NAO examined whether the competence and expertise cited aligned with her duties and functions as Consultant. While the NAO concedes that Hon. Cutajar's professional and political experience was of benefit in the fulfilment of her role as a representative of the ITS and in facilitating stakeholder management, an element of reservation persists as to her competence in providing strategic and operational support, and in establishing performance standards and indicators. Of greater concern to this Office was Hon. Cutajar's ability to draft and review financial documents and to ensure the ITS's adherence to legal and ethical requirements, aspects of work for which Hon. Cutajar had no evident experience and for which the CEO ITS failed to justify.
- 2.6.6 In submissions to the NAO, the Consultant reiterated that stated by the CEO ITS, in that the post required someone with experience in education and familiarity with the electoral manifesto of the party in government to assist in the coordination of the Institute's strategy for 2021-2025. Seeking to justify her competence in this respect, the Consultant referred to previous experience in coordinating matters associated with a Commonwealth Heads of Government Meeting. In addition, the Consultant cited her professional background as a teacher, wherein she indicated her active involvement in the formulation of education-related policy at party level and her role in drafting the party's electoral manifesto. She also highlighted her work as Commissioner for Simplification and Reduction of Bureaucracy and other boards, wherein stakeholder consultation was key.
- 2.6.7 While the link between certain duties and the professional and political experience of the Consultant was evident, in other instances, this association was deemed less obvious by the NAO. Of particular concern to this Office were the functions specified in the Consultant's contract of employment required technical knowledge, mainly financial and legal, which were incongruent with her professional background. Requested to comment, the Consultant maintained that she could not explain why the contract was so wide-ranging; however, she maintained that this was common practice for reasons of practicality. The Consultant maintained that, as indicated in the job description, her work solely related to the coordination of the drafting of the ITS's strategy. This was deemed ambiguous by the NAO, for the duties specified in the Consultant's contract of employment made no reference to this specific function.
- 2.6.8 Notwithstanding the arguments put forward by Hon. Cutajar, the NAO is of the opinion that certain functions and duties required technical expertise, such as the preparation and review of financial reports, and the ensuring of legal compliance. In both these respects, Hon. Cutajar did not have the necessary expertise to fulfil these duties in a diligent and professional manner, thereby casting doubt on the rationale to engage the Consultant and the basis of her employment.

# Chapter 3 | Scant evidence of work carried out and the under declaration of earnings by Hon. Cutajar were of concern

## 3.1 Little to no evidence exists of the work carried out by the Consultant

3.1.1 Having explored the developments leading to the engagement of the Consultant, the NAO's attention shifted towards whether the functions and duties stipulated in her contract of employment were fulfilled.

3.1.2 A key function that the Consultant was to provide related to strategic and operational support. Specified in the contract of employment was that the Consultant was to aid the CEO in steering the ITS in line with its vision, assist with day-to-day decisions, and oversee all operations and business activities to ensure consistent alignment with the Institute's overall strategy and mission. In addition, the Consultant was to lead and motivate subordinates and analyse problematic situations and provide solutions thereto.

3.1.3 Another facet of the Consultant's employment concerned the establishment of performance standards and indicators. To this end, the Consultant was to oversee quality control throughout the Institute by establishing appropriate goals, and developing a framework for reporting on progress achieved, particularly through the setting of relevant key performance indicators to monitor outcomes.

3.1.4 In addition, the Consultant was to act as a representative of the Institute and facilitate stakeholder management. In this regard, the Consultant was to represent the ITS in functions, industry events and public meetings, as well as build relations with key partners and stakeholders. Also stated was that the Consultant was to maintain a deep knowledge of the market and industry.

3.1.5 Of note was that certain duties assigned to the Consultant entailed the drafting and reviewing of financial documents. Stipulated was that the Consultant was to work closely with the CEO and the Institute's directors to prepare annual budgets, taking into account potential projects. Moreover, the Consultant was tasked with the review of financial and other reports to identify solutions and improvements required.

3.1.6 A final element captured in the duties of the Consultant involved legal and ethical matters. The Consultant was to enforce adherence to legal guidelines and internal policies to ensure that the ITS acted within legal parameters and operated ethically. In the execution of all duties assigned, the Consultant was to report directly to the CEO ITS.

- 3.1.7 Against this backdrop, the NAO requested the ITS to provide evidence of the work carried out by the Consultant. The CEO ITS indicated that given his several work commitments abroad in May 2019, an initial meeting with the Consultant was held on 5 June 2019. According to the CEO ITS, in the interim, the Consultant was to understand the Institute's operations as a higher education institution. The way forward regarding the Consultant's employment was discussed during the June 2019 meeting between the CEO ITS and the Consultant. During this meeting, the parties agreed that in the initial months of her employment, the Consultant was to familiarise with the existing structures of the ITS and analyse several audit reports, namely those drawn up by the NAO, the IAID, the NCFHE and internally (paragraph 2.1.15 refers). Aside from a record relating to the calendar event, the NAO was not provided with any meeting notes or minutes relating to this interaction. When queried, the CEO ITS maintained that it was not normal practice for him to take minutes of one-to-one meetings and argued that he ordinarily set targets, provided contacts within the Institute and monitored outcomes.
- 3.1.8 Subsequently, on 17 June 2019, another meeting was convened, for which the Chief Operating Officer (COO) Corporate Services and the COO Academia were also present. According to the CEO ITS, the purpose of this meeting was to discuss and establish a collaborative framework. Consequently, the parties agreed that the COO Corporate Services was to provide the Consultant with the ITS's organisational chart. Furthermore, the CEO ITS encouraged the Consultant to maintain continuous communication with the COOs, ensuring that any resources she required would be made available. Following enquiries by the NAO, the COO Corporate Services confirmed that she had submitted the ITS's organisational chart to the Consultant later that day. The COO Corporate Services noted that she received no other requests from the Consultant throughout the term of the latter's engagement.
- 3.1.9 Pursuant to the 17 June 2019 interaction, other meetings were held between the Consultant and the COO Academia. According to the CEO ITS, these meetings primarily involved preparatory work in connection with the Institute's strategic plan. The NAO sought to corroborate that stated by the CEO ITS through enquiries with the COO Academia. In submissions to this Office, the COO Academia indicated that, initially, the Consultant was to familiarise with the complexities of the Institute's ecosystem, processes and procedures, particularly in relation to academic operations. The COO Academia argued that this understanding was essential prior to any consulting work being undertaken in preparation for the envisaged organisational changes and strategic planning.
- 3.1.10 Requested to provide documentation evidencing the work undertaken by the Consultant, the COO Academia stated that there was no direct or official correspondence exchanged between the two. However, the COO Academia referred to four meetings held, characterised by informal discussions, critical verbal exchanges and the sharing of ideas. Notwithstanding this, the COO Academia conceded that the outcome of these encounters did not yield any physical documentation, although he maintained that the feedback obtained was often taken into consideration.

3.1.11 While minutes of these meetings were not provided, the COO Academia made available a series of journal entries corresponding to the four meetings held with the Consultant. Although the journal entries did not specify the date of the meetings, it was possible for the COO Academia to provide indicative dates of when these were held through reference to other entries. During the first meeting, held on 17 June 2019, the COO Academia provided the Consultant with a detailed overview of the ITS organisational structure and its study programmes. Information relating to the ITS's student profile, in terms of local and international intake, was also outlined, as was the provision of language instruction to the Institute's full-time and part-time students. As a way forward, efforts to strengthen the Institute's educational product offering to international students was to be discussed.

3.1.12 The second meeting between the COO Academia and the Consultant was held during the last week of July 2019. Based on the records provided by the former, the NAO understood that the focus of this meeting was on international students. Aspects noted by the COO Academia related to market research, outreach and the attendance to fairs. Also noted was reference to pricing and student support during application stage, and short courses intended for those already in employment.

3.1.13 In the third meeting, held during the last week of September 2019, reference was again made to the ITS's international students, with focus on admissions. Also discussed were matters relating to the continuous professional development of academics and the short courses to be delivered in the ensuing academic year. As a way forward, the COO Academia noted that attention was to be directed to the Institute's academic strategy.

3.1.14 The final meeting between the COO Academia and the Consultant was held in the last week of October 2019. Captured in the notes was reference to a survey among students and alumni of the ITS, and an update on matters relating to the master's programme, particularly enrolment, scholarship and outreach. Of note was that the ITS was to commence work on the Institute's strategic plan for 2021-2025, a matter that was to be brought up in the upcoming Board of Governors meeting.

3.1.15 An element of corroboration regarding the referral of the ITS's strategic plan was provided by the CEO ITS. During the Board of Governors meeting of 1 November 2019, the CEO ITS notified the Board that the drafting of the Institute's strategic plan was to commence shortly with the aim of publishing by end 2020. The CEO ITS referred to the political unrest that arose in November 2019, which resulted in a change in the Minister for Tourism and the subsequent resignation of the Prime Minister. According to the CEO ITS, these changes had a detrimental effect on the activities of the Institute, resulting in the decision to suspend work on the new strategy until January 2020. It is to be noted that the appointment of Hon. Robert Abela as Prime Minister on 13 January 2020 resulted in a Cabinet reshuffle. This political change resulted in the Consultant being appointed Parliamentary Secretary for Equality and Reforms on 15 January 2020 and her resignation from the Institute.



- 3.1.16 The NAO sought to determine whether the resignation of the Consultant was discussed by the Institute's Board of Governors. The meeting that immediately followed the Consultant's resignation was that held on 14 May 2020. The CEO ITS informed this Office that the lull in meetings was attributable to the fact that the members of the Board had resigned following the change in Prime Minister. The review of the minutes of this meeting revealed that while the Board discussed several HR-related matters concerning staff at the ITS, the resignation of the Consultant did not feature in any part of these discussions. The centrality of the role to be fulfilled by the Consultant, as depicted by the CEO ITS, was belied by the total absence of any reference to her existence or work by the Institute's Board of Governors prior to, during and following her employment therewith.
- 3.1.17 Moreover, the fact that the Consultant was not replaced following her resignation reinforces doubts as to the utility of her employment and the work carried out. In submissions to the NAO, the CEO ITS stated that he directly assumed the duties previously assigned to the Consultant. By way of background, the CEO ITS explained that the resignation of the Consultant was shortly followed by the outbreak of the COVID-19 pandemic. As a result of the pandemic, the work of the CEO ITS in relation to his other employment with Government as CEO of the Mediterranean Conference Centre reduced to such an extent that it was possible for him to assume the Consultant's duties instead. To be noted is that during the period subject to audit, the CEO ITS fulfilled this function on a part-time basis, with his full-time employment being that of CEO Mediterranean Conference Centre. Notwithstanding that stated, based on the evidence at hand, this Office's concerns regarding the rationale and need of the engagement of the Consultant persist.
- 3.1.18 Given the limited interactions with the COO Corporate Services and the COO Academia, and the absence of any reference in meetings of the ITS Board of Governors, the NAO again sought evidence of the work undertaken by the Consultant through queries submitted to the CEO ITS. The CEO ITS ought to have had ample evidence of the work carried out by the Consultant for her contract of employment stipulated that she was to report directly to him. Evidence sought by the NAO entailed any documentation generated, such as reports drawn up, correspondence exchanged, discussions held during meetings, and any other evidence of work undertaken. In view of the Consultant's duties and functions, this documentation ought to have been linked, but not limited, to attendance at ITS-related functions, the preparation of annual budgets, participation in projects, activities linked to quality control, the coordination of programmes to monitor KPIs, the review of financial and non-financial reports and travel on behalf of the Institute. Despite several requests to this effect, the CEO ITS did not provide the NAO with any documentation evidencing the work undertaken by the Consultant. He contended that the Consultant provided him and the COO Academia with regular updates in meetings held with the ITS's Executive Management Office and that the initial months were spent familiarising with the Institute's setup and operations, and more generally undertaking research regarding higher education institutions. In addition, the CEO ITS maintained that the Consultant's primary role in coordinating the Institute's strategic plan had not yet commenced during the first six months of

her engagement, which situation was cited as the reason for the lack of records evidencing the Consultant's work. That stated by the CEO ITS regarding the coordinating role of the Consultant was dissonant with the broader and more onerous responsibilities specified in the contract of employment.

3.1.19 Having reviewed the ITS's submissions of the work undertaken by the Consultant in respect of her duties and functions, the NAO sought the perspective of Hon. Cutajar as to her input when employed by the Institute. The Consultant indicated that in the initial months of her employment, she was not requested to draft any reports. She maintained that her work entailed research and internal discussions primarily with the CEO and the COO Academia. Although the Consultant informed the NAO that she referred to her notes during these meetings, these records were not retained in view of the lapse of time and her subsequent resignation when appointed Parliamentary Secretary. Consequently, no records of work undertaken by the Consultant were provided to this Office.

3.1.20 Various concerns were identified in relation to the implementation of the duties that the Consultant was to carry out. First, was the inconsistency noted in terms of the nature of the work to be undertaken. The CEO ITS initially cited the need to engage an individual who had the MOT's trust, given that the tasks assigned in relation to the ITS's strategy were deemed sensitive; however, this understanding contrasted with later disclosures by the CEO ITS wherein he downplayed the role assigned to one of coordination. Second, was the unduly lengthy span assigned for familiarisation, considered unwarranted by the NAO given the expertise claimed as grounds for the employment of Hon. Cutajar. Third, was the technical nature of particular duties, which were considered as outside of the Consultant's area of expertise. While the CEO ITS stated that the duties as identified in the contract of employment were intended to provide an element of flexibility, this Office contends that the assignment of duties for which Hon. Cutajar did not possess the required competencies rendered this argument fallacious.

3.1.21 In conclusion, little evidence of the work undertaken by the Consultant accounts for her employment over a period of approximately eight months. In essence, this consisted of screenshots of the calendar event of two meetings organised by the CEO ITS, the referral of the Institute's organisational chart by the COO Corporate Services, and journal entries corresponding to four meetings with the COO Academia. Although the NAO acknowledges that not all duties and functions generate documentation, ordinarily, knowledge-based work results in the creation of considerable traces of activity. These records of evidence generally assume the form of correspondence, reports drawn or reviewed, and records of events and meetings attended. Of concern to the NAO was that the employment of the Consultant generated no such traces of activity, casting doubt on what work was carried out. Considering prior concerns raised relating to the irregular and fraudulent nature of this employment, the lack of evidence of any work carried out reinforces this Office's understanding of negligence in the utilisation of public funds.

### 3.2 The remuneration paid to the Consultant was in accordance with the contract of employment

3.2.1 The NAO sought to ascertain whether the remuneration paid to the Consultant was consistent with that established in her contract of employment. Stipulated in the contract was that the Consultant was to be employed on a minimum of 24 hours per week and was to be remunerated at an annual rate of €27,000, payable in 13 pro-rata payments. These payments excluded any statutory bonuses payable, while cost-of-living adjustments announced by the government were to apply cumulatively throughout the term. Moreover, the Consultant was not entitled to any additional salary if the minimum number of hours was exceeded. The payments were to be made every four weeks in arrears.

3.2.2 Based on the review of payslips provided by the ITS in respect of the Consultant, the NAO established that payments made were in accordance with that stipulated in the contract of employment. Between 2 May 2019 and 13 January 2020, the date of resignation of Hon. Cutajar from her employment as Consultant, a gross salary of €19,195 was paid (Figure 2 refers).

Figure 2 | Salary payments made to the Consultant, 2 May 2019 - 13 January 2020

Pay period	Basic pay (€)	Arrears (€)	Bonuses & supplements (€)	Gross pay (€)	FSS (€)	Net pay (€)
16/07/2019 – 12/08/2019	2,076.92	5,587.80	22.20	7,686.92	1,153.00	6,533.92
13/08/2019 – 09/09/2019	2,076.92	0.00	50.47	2,127.39	319.00	1,808.39
10/09/2019 – 07/10/2019	2,076.92	0.00	0.00	2,076.92	501.00	1,575.92
08/10/2019 – 04/11/2019	2,076.92	0.00	0.00	2,076.92	519.00	1,557.92
05/11/2019 – 02/12/2019	2,076.92	0.00	67.55	2,144.47	536.00	1,608.47
03/12/2019 – 30/12/2019	2,076.92	0.00	0.00	2,076.92	519.00	1,557.92
01/01/2020 – 28/01/2020	965.46	0.00	39.67	1,005.13	151.00	854.13
<b>Total</b>	<b>13,426.98</b>	<b>5,587.80</b>	<b>179.89</b>	<b>19,194.67</b>	<b>3,698.00</b>	<b>15,496.67</b>

### 3.3 Income earned by Hon. Cutajar from public funds was under-declared in submissions to Parliament

3.3.1 Aside from establishing the compliance of payments with the provisions of the contract of employment, the NAO sought to verify whether the income earned by Hon. Cutajar from this engagement was disclosed in the declaration of assets that she submitted corresponding to the years 2019 and 2020. Article 5 of the Schedule to the House of Representatives (Privileges and Powers) Ordinance (Chapter 113) stipulates that “Every member of the House of Representatives will annually at the time established by the Speaker of the House of Representatives indicate in a register which will be purposely kept by the Speaker, which register shall be open to inspection by the public: (a) his work or profession, and if he is employed, the identity of his employer; ... (c) shares in commercial companies investments including money deposited in banks and any other form of pecuniary interest; ...”. The NAO reviewed the declarations made by Hon. Cutajar

during the period of interest. Of note to this Office was that, while Hon. Cutajar declared her employment as a Member of Parliament and Commissioner for Simplification and Reduction of Bureaucracy, she failed to indicate her employment as Consultant.

3.3.2 In addition, Article 7.3 of the Second Schedule to the Standards in Public Life Act (Chapter 570) stipulates that “When a Minister is appointed to office, he shall immediately provide a statement of his assets and interests to the Cabinet Secretary on the relative form. ... This statement shall be provided every year in the manner indicated from time to time.” In this context, the NAO sought to ascertain whether the income earned by Hon. Cutajar from her employment as Consultant was disclosed on her appointment. Given that Hon. Cutajar was appointed Parliamentary Secretary for Equality and Reforms within the Ministry for Justice, Equality and Governance on 15 January 2020, this Office reviewed the submission made in respect of 2019.

3.3.3 The NAO established that Hon. Cutajar declared a gross income of €74,000 in 2019. The declaration, which was undated, was laid before Parliament on 12 October 2020. Requested to elaborate on the sources of this income, Hon. Cutajar informed the NAO that her income in 2019 was earned from three sources, that is, her honoraria as a Member of Parliament, her employment as Commissioner for Simplification and Reduction of Bureaucracy and her role as Consultant.

3.3.4 This Office sought to verify that declared by Hon. Cutajar in respect of earnings sourced through public funds. Two aspects of enquiry were pursued. First, was whether that declared from specific engagements was accurate. Second, was whether Hon. Cutajar comprehensively declared all sources of income from public funds. It is pertinent to note that the NAO could not verify income earned through activity outside of the public sector, whether declared or otherwise, for this fell beyond the remit of this Office.

3.3.5 The NAO confirmed that during the period under review, aside from her employment as Consultant, Hon. Cutajar was also engaged by the Government as Commissioner for Simplification and Reduction of Bureaucracy. This contract of service commenced on 27 June 2018 and was to be effective for a period of 12 months. Specified in the contract was that the salary payable to the Commissioner was pegged with Scale 4 of the government’s schedule of grades, equivalent to €34,504 in 2018. In addition, the Commissioner was entitled to a fully-expensed car, an expense allowance of 25 per cent of Scale 7, which amounted to €6,655 annually, and a fully-expensed mobile phone and home Internet service. Statutory bonuses and income supplements were also payable, provided that these were not already being received from other sources. Hon. Cutajar’s contract of service as Commissioner for Simplification and Reduction of Bureaucracy was renewed on 27 June 2019 for a further period of 12 months. The salary payable was revised to €35,251, while her expense allowance increased to €6,835. Other employment conditions remained unchanged. Based on information submitted by Parliament and the OPM, the NAO established that Hon. Cutajar was paid a gross salary of €43,777 in 2019 in respect of her contract of service as Commissioner for Simplification and Reduction of Bureaucracy.

- 3.3.6 Another source of income earned by Hon. Cutajar from public funds was the honoraria paid to Members of Parliament. In 2019, Hon. Cutajar was paid €22,752 as honoraria, based on 50 per cent of Salary Scale 1. In addition, Hon. Cutajar was compensated for her role as Chair of the parliamentary Family Affairs Committee, for which a sum of €3,413 was paid in 2019. In total, Hon. Cutajar earned €26,165 through her role as a Member of Parliament.
  
- 3.3.7 As regards Hon. Cutajar’s employment as Consultant, the NAO ascertained that in 2019, she was paid €18,190. Following queries raised by the NAO regarding whether Hon. Cutajar was employed or contracted by the Government in any capacity other than her role as Member of Parliament and her engagement as Commissioner for Simplification and Reduction of Bureaucracy, the OPM confirmed that, based on records held, it had no information of other payments aside from the aforementioned.
  
- 3.3.8 Based on information sourced, the NAO established that the total income earned by Hon. Cutajar from public funds in 2019 amounted to €88,132. Evident was that this income exceeded that declared by Hon. Cutajar in terms of her submission to the Cabinet Secretary as per Article 7.3 of the Second Schedule to the Standards in Public Life Act (Chapter 570). The gross income declared by Hon. Cutajar was understated by €14,132 (Figure 3 refers).

**Figure 3 | Reconciliation of earned and declared income by Hon. Cutajar**

<b>Source of income</b>	<b>Amount (€)</b>
Commissioner for Simplification and Reduction of Bureaucracy	43,777
Member of Parliament	26,165
Consultant to the CEO ITS	18,190
<b>Total</b>	<b>88,132</b>
Declared income in submission to Cabinet Secretary	74,000
<b>Variance</b>	<b>(14,132)</b>

# Chapter 4 | Timeline of events and key conclusions

## 4.1 Timeline of events

4.1.1 Having reviewed the contract of employment between the CEO ITS and the Consultant, hereunder are the salient events in connection therewith, presented in chronological order (Figure 4 refers).

Figure 4 | Timeline of events

Date	Details of event
17 January 2019	First meeting of the ITS Board of Governors in 2019. Although several HR-related issues were discussed during this and subsequent meetings, the need to engage a consultant to aid the CEO ITS was never referred to in any manner.
12 March 2019	Second meeting of the ITS Board of Governors in 2019 during which the members that were tasked with the review of the Institute’s policies and procedures were proposed and endorsed by the Board. In later submissions, the CEO ITS highlighted this function as a key responsibility of the Consultant; however, no reference was made to her involvement despite the proximity of this meeting to her employment.
April 2019	Meeting held between the CEO ITS and the Chief of Staff to the Minister for Tourism, wherein the need and scope for the engagement of a consultant to the Institute’s CEO was discussed. Subsequently, the Chief of Staff informed the CEO ITS that Hon. Cutajar was deemed the idoneous candidate. According to the CEO ITS, in line with the decision by the MOT, he personally contacted Hon. Cutajar to discuss the offer of employment. This offer was duly accepted.
2 May 2019	Contract of employment entered into between the CEO ITS and Hon. Cutajar, engaged as Consultant.
13 May 2019	The Chief of Staff to the Minister for Tourism provided the CEO ITS with a draft position of trust contract for the engagement of the Consultant.
17 May 2019	Another meeting was held by the ITS Board of Governors. During this meeting, the CEO ITS referred the Institute’s revised HR plan for endorsement, which was duly obtained. Despite the employment of the Consultant two weeks prior, this development was not captured in the approved plan.
5 June 2019	A draft of the contract of employment was submitted by the Chief of Staff to the Minister for Tourism to the CEO ITS. The document was titled ‘Contract RCutajar’.
5 June 2019	A meeting was held between the CEO ITS and Hon. Cutajar to discuss the way forward regarding the latter’s engagement as consultant.
17 June 2019	Another meeting was held between the CEO ITS and Hon. Cutajar, for which the Institute’s COO Corporate Services and COO Academia were present. The latter indicated that four other meetings were held with Hon. Cutajar.

11 July 2019	In a chat with a third party, Hon. Cutajar indicates that she is to be engaged as a consultant to the CEO ITS.
24 July 2019	Another meeting was held by the ITS Board of Governors wherein no reference was made to the Consultant. This situation persisted in all subsequent meetings held during her employment. Later meetings were held on 21 August 2019 and 1 November 2019.
July 2019	A second meeting was held between the COO Academia and the Consultant.
September 2019	The third meeting between the COO Academia and the Consultant was held.
October 2019	The fourth and final meeting held between the COO Academia and the Consultant. The relevance of these meetings is that they constitute the only evidence of any form of activity by Hon. Cutajar in her capacity as Consultant.
13 January 2020	The appointment of Hon. Robert Abela as Prime Minister resulted in a Cabinet reshuffle.
13 January 2020	Hon. Cutajar resigned from her employment as Consultant. During her engagement as Consultant, Hon. Cutajar earned a gross income €19,195.
15 January 2020	Hon. Cutajar was appointed Parliamentary Secretary for Equality and Reforms.
27 February 2020	The ITS engaged BEAT Ltd to formulate a Corporate and Business Strategy for the Institute.
12 October 2020	In her declaration of assets for 2019, Hon. Cutajar declared a gross income of €74,000. Of note is that this was understated by €14,132.
21 March 2023	A series of chats between Hon. Cutajar and a third party were made public. These chats assume relevance for, in that stated by Hon. Cutajar regarding her employment as Consultant, there were undertones of misuse of public funds.
23 March 2023	Reports in the press relating to the Consultant's contract of employment with the ITS emerged following a request made in terms of the Freedom of Information Act.
28 March 2023	Chair ADPD requested the NAO to investigate the Consultant's contract of employment.
3 April 2023	Hon. Cutajar resigned from the Labour Party parliamentary group.

## 4.2 Key conclusions

4.2.1 The point of departure of the NAO's enquiry on the engagement of a consultant to the CEO ITS was whether the need for this employment was captured in any form. Despite the broad enquiries and the review of key documents by this Office, the need for the engagement of a consultant could not be traced to any source. This need was not referred to in any strategic report, be it in annual reports drawn up by the MOT and the ITS, or the Institute's strategy. Furthermore, the prospective employment of a consultant was not brought to the attention of the ITS Board of Governors, despite the obligation at law for its involvement in such matters. Of note to the NAO was that the Board regularly discussed HR-related matters; however, the consultant never featured in its deliberations. Graver still was that this position was not included in the ITS HR plan referred to the Board a few weeks after the Consultant had been engaged. Aside from concerns relating to the need for this engagement, the review of all ITS Board of Governors minutes revealed that the Consultant's existence and activity remained obscure to the Board throughout the period of her employment.

4.2.2 To justify the omission of the Board of Governors in the engagement of a consultant, the CEO ITS maintained that this was discussed by the Institute's Executive Management Office and

supported this claim through reference to several reports highlighting the challenges faced by the Institute prior to 2015. The relevance of these reports was questioned by the NAO, as their link to the matter under review was deemed tenuous at best. This Office established that the employment of a consultant was not captured in any other meetings, correspondence exchanged or documentation generated by the ITS. The absolute dearth of any form of record relating to the need for this employment casts doubt on that claimed by the CEO ITS and reinforces the NAO's concerns regarding the validity of the basis of the engagement of the consultant.

4.2.3 Another aspect enquired on by the NAO was whether the consultant's functions and duties were determined prior to engagement. Requested to disclose who was involved and how these were set, the CEO ITS indicated the role of the Institute's Executive Management Office in discussions intended to align the consultant's functions and duties with the ITS's priorities. Despite requests, no documentation evidencing these discussions was provided, rendering this process nebulous.

4.2.4 The NAO considered how the remuneration to be paid to the consultant was set. The CEO ITS indicated that this was established by the Institute's Executive Management Office and emphasised relativity to salaries of academic staff as a guiding principle in its determination. Nevertheless, this Office observed that no reference was made to the guidelines or regulations governing the setting of such pay, with the hourly rate payable to the consultant (€21.63 per hour) exceeding the threshold in force at the time (€18.59 per hour). Also of concern was the vagueness in responses received from the CEO ITS in relation to the setting of pay, who assigned collective responsibility to the Institute's Executive Management Office. Another element that drew the NAO's attention was the CEO's reference to a parliamentary question tabled 20 years earlier as the basis for setting pay, which was considered irrelevant and perplexing. Consistent with most aspects of this employment, no documentation in support of that claimed by the CEO ITS in relation to the determination of the salary payable was made available. In sum, the NAO maintains that the basis for the remuneration payable to the consultant was obscure and unsound, and exceeded the threshold established in the relevant policy.

4.2.5 A crucial component of the NAO's review comprised the verification of whether the recruitment complied with applicable regulations. Recruitment by public sector entities is ordinarily governed by Directive 7 and its amendments, and corresponding manuals of procedures appended therewith. By means of this Directive, the government delegated the authority to recruit to public sector entities, while simultaneously maintaining oversight through rigorous mechanisms of authorisation. Although the NAO established that Directive 7 applied to the recruitment of the consultant undertaken by the ITS, based on submissions by the IRU and the PS MOT, this Office understood that the Institute did not adhere to the provisions established therein.

4.2.6 In justifying the departure from these provisions, the CEO ITS argued that the employment of a consultant was a politically sensitive role and urgently required, and therefore requested the guidance of the MOT. Expanding on the matter, the CEO ITS referred to a meeting held with the



Chief of Staff to the Minister for Tourism in April 2019, during which the need and scope for the engagement of a consultant was discussed. According to the CEO ITS, it was on his initiative and through this intervention with the Chief of Staff that the employment of Hon. Cutajar ensued. Advised to await further instructions from the Chief of Staff, the CEO ITS indicated that he was later informed that after “consulting with the Ministry”, Hon. Cutajar was deemed the idoneous candidate. According to the CEO ITS, in line with the decision by the MOT, he contacted Hon. Cutajar to discuss the offer of employment, which was accepted. The NAO was not provided with records of these crucial initial exchanges.

4.2.7 The CEO ITS indicated that, following guidance sought from the Chief of Staff to the Minister for Tourism, the latter provided the CEO with a draft position of trust contract. This and subsequent exchanges between the two reinforced the understanding of the CEO ITS that the engagement of Hon. Cutajar as Consultant was to be on a position of trust basis. Given this understanding, the NAO sought to determine whether this employment conformed with the policies and procedures governing the engagement of individuals on a trust basis. Key in this regard was the ‘Policy on the Engagement of Persons/Positions on a Trust Basis’, issued on 7 July 2017, which consolidated previous policy directions concerning the engagement of staff on a trust basis.

4.2.8 The NAO concluded that the recruitment of the Consultant was in breach of the policies and procedures regulating the employment of individuals on a person or position of trust basis. While the policy permitted the ITS to engage an advisor to assist on managerial, technical and/or ancillary issues, several requirements intended to safeguard governance were stipulated. As regards the authorisation of such employment, the ITS failed to refer the engagement of the Consultant to the PS MOT, which endorsement was to be the first in a sequence of authorisations necessary for the Institute to validate its recruitment. In addition, the ITS did not submit the supporting documentation required in terms of the policy necessary in justifying the necessity to recruit the Consultant. Further breached by the Institute was the obligation to report the employment to several authorities, namely, the OPM, MFIN and the NAO.

4.2.9 Presented with the myriad aspects of non-adherence to the policies and procedures applicable to recruitment on a trust basis, the CEO ITS stated that he was not aware of these requirements, indicated that they were not brought to his attention by the Chief of Staff to the Minister for Tourism, and maintained that he had no prior experience of such employment. Nonetheless, this Office disagreed with the arguments put forward by the CEO ITS for, ultimately, the ITS was the employer of the Consultant and it was the Institute’s responsibility to ensure that this employment was undertaken in line with relevant policies and procedures.

4.2.10 The Chief of Staff to the Minister for Tourism refuted that stated by the CEO ITS regarding the MOT’s decision that Hon. Cutajar was “in their opinion an idoneous candidate”, maintaining that while he did not recall the precise exchanges, the input of the Minister’s Secretariat did not extend “beyond a mere notification of the vacancy to a candidate, or a potential candidate to the employer.” Moreover, the Chief of Staff argued that he was unaware that Hon. Cutajar

was employed on a trust basis and reiterated that he had no involvement in this engagement. This version of events contrasted with that asserted by the CEO ITS, who affirmed that it was the Chief of Staff who referred Hon. Cutajar for appointment as Consultant in a specific and direct manner. Moreover, it was contradicted by the email submitted by the Chief of Staff to the CEO ITS, wherein direct reference was made to the engagement of Hon. Cutajar.

4.2.11 The dissonant perspectives of the CEO ITS and the Chief of Staff to the Minister for Tourism call into question the veracity of their assertions, with the NAO dubious of the responsibility shouldered by the former and the limited involvement claimed by the latter. Compounding matters and reinforcing the NAO's unease was the vacuous recollection of the Minister for Tourism, which limited this Office's attempts at establishing facts. Nevertheless, the failures in authorisation, substantiation and reporting arise from the ITS's bypassing of all regulations that ought to have ensured proper oversight and governance of employment through public funds and consequently elicit the NAO's gravest concerns. In conclusion, the NAO established that the employment of the Consultant breached all regulations governing recruitment, be it in terms of ordinary public sector employment or in terms of individuals engaged on a trust basis.

4.2.12 The agreement regulating the employment of Hon. Cutajar as Consultant was entered into on 2 May 2019. Several sources of evidence indicated that the contract was backdated. The draft contracts of employment referred to the CEO ITS by the Chief of Staff to the Minister for Tourism on 13 May 2019 and 5 June 2019 constituted one source of evidence. Another source was the payment of significant arrears in the first salary paid to Hon. Cutajar, which corresponded to the period 16 July 2019 to 12 August 2019. The third source of evidence was a chat with a third party, timestamped 11 July 2019, wherein Hon. Cutajar referred to her engagement with the ITS as a development that was yet to happen. This information was in the public domain. Although the CEO ITS and the Consultant sought to explain these anomalies, the convergence of the multiple sources of evidence amplifies the NAO's concerns that the contract of employment was backdated by at least one month and therefore irregular. The parties were aware that the date cited was incorrect and misrepresentative, evidenced no less by correspondence, salary-related documentation and chats with a third party as detailed. While the financial beneficiary of this irregularity was Hon. Cutajar, this was facilitated and rendered possible by the actions of the CEO ITS when consenting to the disbursement of public funds he was duty bound to safeguard.

4.2.13 Another aspect of analysis undertaken by the NAO was whether the Consultant possessed the necessary credentials and experience to execute the duties stipulated in the contract of employment. The main aspects of her employment entailed providing strategic and operational support, acting as a representative of the Institute and aiding with stakeholder management, drafting and reviewing financial documents, establishing performance standards and indicators, and ensuring the Institute's adherence in terms of legality and ethical conduct. This Office acknowledges that Hon. Cutajar's professional and political experience aligned with

certain aspects of her role as Consultant. However, of concern to the NAO was Hon. Cutajar's responsibility to draft and review financial documents and to ensure the ITS's adherence to legal and ethical requirements, aspects of work for which Hon. Cutajar had no evident expertise.

4.2.14 Several concerns emerge in terms of the implementation of the duties assigned to the Consultant. The first relates to the incongruence between the urgency initially cited to engage an individual who enjoyed the MOT's trust in view of the sensitive work to be undertaken on the ITS's strategy, and the role of mere coordination between stakeholders involved in the strategy that was actually assigned. The second matter that drew the NAO's attention was the lengthy period required for familiarisation, which was deemed anomalous by this Office in view of the expertise cited as basis for the engagement of Hon. Cutajar. The third concern related to the technical nature of certain duties that were not within the expertise of the Consultant. While the NAO acknowledges the contention by the CEO ITS and the Consultant, that the list of duties was drafted as wide as possible to allow for flexibility, this Office maintains that the assignment of duties beyond the competencies of Hon. Cutajar rendered this argument flawed.

4.2.15 In sum, based on the submissions by the ITS and Hon. Cutajar, the evidence of work carried out by the Consultant over a period of approximately eight months consisted of screenshots of the calendar event of two meetings organised by the CEO ITS, the referral of the Institute's organisational chart by the COO Corporate Services, and journal entries corresponding to four meetings with the COO Academia. While the NAO concedes that certain duties and functions may not necessarily result in documentation, generally, knowledge-based work generates ample evidence of activity, be it in the form of correspondence, reports being drawn or reviewed, and records of events and meetings attended. In the case of the Consultant, the dearth of evidence casts doubt on what work was carried out. When seen in the context of earlier points raised by this Office regarding the irregularity and fraudulent nature of this employment, the poor output, if any, of the Consultant aggravates concerns of negligence in the disbursement of public funds by all involved in this contrived engagement.

4.2.16 The NAO established that payments made were in accordance with that stipulated in the contract of employment. Between 2 May 2019 and 13 January 2020, the date of resignation of Hon. Cutajar from her employment as Consultant, a gross salary of €19,195 was paid. Aside from her engagement with the ITS, in 2019, Hon. Cutajar earned income of €43,777 from her role as Commissioner for Simplification and Reduction of Bureaucracy and €26,165 as a Member of Parliament. Aggregated with the €18,190 earned in 2019 as Consultant, the gross earnings of Hon. Cutajar amounted to €88,132. This income exceeded the €74,000 declared by Hon. Cutajar by €14,132.

## 2022-2023 (to date) Reports issued by NAO

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July 2022 National Audit Office Annual Report and Financial Statements 2022

### NAO Audit Reports

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May 2023 An audit of matters relating to the concession awarded to Vitals Global Healthcare by Government Part 3 | Steward Health Care assumes control of the concession [Abridged]

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