

Brincat Anna at Parlament-MT

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Sent: Monday, 06 October 2025 09:35
To: Borg Ian at MFT
Cc: Brincat Anna at Parlament-MT
Subject: Representations by Fortina Group [CP-AUTONOMY.FID118239]
Attachments: Covering Letter signed(1039291.1).pdf; Fortina Representations Final(1039288.1).pdf

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Dear Hon. Borg,

I have been instructed by our clients, the Fortina Group, to submit the attached representations for consideration by the National Audit Office Accounts Committee. Please find attached a covering letter and a full version of the representations made by our clients.

Yours faithfully

Louis de Gabriele

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ADVOCATES

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October 6, 2025

The Chairman
National Audit Office Accounts Committee
Attn. Hon. Dr. Ian Borg

By email to: ian.borg@gov.mt
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Dear Hon. Borg,

We are instructed by our client, the Fortina Group, to write to your Honourable Committee in connection with the Committee's examination of the report published by the National Audit Office on 15 September 2025, entitled "The Government's rescission of restrictions on the site of the Fortina Hotel" (the "NAO Report"). Following publication of the NAO Report, our client has been the subject of substantial misinformation concerning the matters addressed therein. We therefore respectfully submit these representations on behalf of our client to ensure that the Committee is furnished with accurate and comprehensive information necessary for its proper consideration of the NAO Report.

Our client does not seek to engage in any controversy regarding the NAO Report. Rather, these submissions are confined to the central issue addressed in that report: whether the Fortina Group has, in substance, agreed to pay fair value for the waiver of certain restrictions encumbering their property.

Having obtained expert advice on the valuation methodologies employed, our clients trust that these representations will demonstrate:

- The material errors, methodological flaws, and fundamental inconsistencies inherent in the valuation exercises referenced in the NAO Report;
- The way these deficiencies have been employed to materially overstate the "fair compensation" properly payable for the removal of the restrictive conditions; and
- The reasons why the Fortina Group's agreement to pay €8.1M, is well in excess of fair value.

After adjusting for material errors, methodology flaws and inconsistencies in the valuation workings referred to in the NAO report, the technical experts instructed by our client are of the view that a realistic range for fair value for the waiver of the restrictive conditions in question would be **€3.5 million to €7.4 million**. The accompanying report will explain this in some detail.

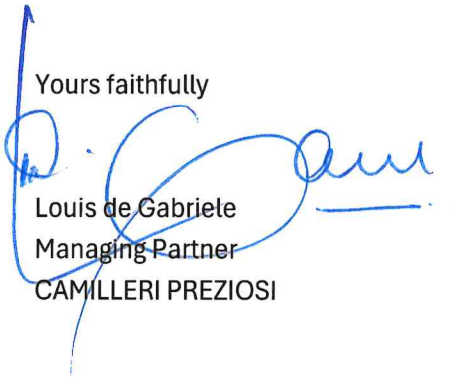


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It is manifest that our client derived absolutely no benefit whatsoever from the €8.1M valuation to which it reluctantly agreed. On the contrary, the attached analysis will demonstrate that our client was materially disadvantaged, having agreed to pay an amount that exceeds, by any reasonable measure, what could properly be characterised as "fair value" for the benefits received.

We respectfully submit that the Committee will find the accompanying report of material assistance in its deliberations. Should the Committee require any clarifications or further elucidations concerning the contents of the accompanying report, our clients' technical experts will be at your disposal to provide any technical clarifications the Committee may consider appropriate.

Yours faithfully



Louis de Gabriele
Managing Partner
CAMILLERI PREZIOSI

REPRESENTATIONS BY

FORTINA GROUP

REGARDING THE NATIONAL AUDIT OFFICE REPORT

ENTITLED "THE GOVERNMENT'S RESCISSION OF RESTRICTIONS

ON THE SITE OF THE FORTINA HOTEL"

DATED 15 SEPTEMBER 2025

THIS DOCUMENT IS DATED 6 OCTOBER 2025

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1. EXECUTIVE SUMMARY

In response to the National Audit Office report dated 15 September 2025, entitled "The Government's rescission of restrictions on the site of the Fortina Hotel" (the "NAO Report"), the Fortina Group has commissioned independent professional advisers to assist in a technical review of the valuation methodologies and conclusions contained therein. This analysis demonstrates that the compensation amount of €8.1 million substantially exceeds any reasonable assessment of fair market value for the Government of Malta's waiver of restrictive conditions affecting property owned under a freehold title by the Fortina Group.

The evidence presented herein demonstrates that the Fortina Group has committed to a payment that is demonstrably excessive when measured against established valuation principles and industry standards. These representations present compelling evidence and sound analytical foundations supporting the conclusion that fair market value has been substantially exceeded.

This submission will establish:

- A number of material errors, methodological flaws, and internal inconsistencies within the valuation exercises referenced in the NAO Report;
- The way these deficiencies have resulted in an artificial inflation of the purported fair value for the waiver of restrictive conditions; and
- That the compensation sum of €8.1 million is excessive by any objective and reasonable valuation standard.

After adjusting for material errors, methodology flaws and inconsistencies in the valuation workings referred to in the NAO report, the range figures for compensation due would range between €3.5 million and €7.4 million as will be duly substantiated. This clearly shows that the €8.1 million agreed by Fortina is in excess of even the higher end of that range.

Table 1 below demonstrates how when adjusting for material errors, methodology flaws and inconsistencies in the valuation workings referred to in the NAO report, their adjusted compensation figures would range from €3.5 million and €7.4 million as follows

Reconciliation of fair value compensation workings	Architects Valuation	Auditor Valuation	NAO Valuation
	€	€	€
Compensation as per valuer	8,100,000	18,341,562	21,016,063
Alignment of values to 2017 prices	-	2,751,234	3,152,409
Inclusion of total relevant area for both red and purple sites	10,870,945	-	-
Revised valuer compensation at 2017 prices	18,970,945	15,590,328	17,863,653
Correct application of adjustment formula for intermediate and re-a location of encumbered sites	- 5,218,863	-	-
Application of a consistent 8% sales tax for all valuations	-	1,089,119	5,171,115
Application of a consistent 5.9% sales commission for all valuations	- 56,020	- 185,150	- 581,750

Reversal of additional value attributable to 5 star hotel	-	-	-	546,151		
Application of a consistent 29.9% net present value adjustment for all valuations	-	2,133,486	-	-	2,403,162	
Alignment of existing hotel value to deemed	-	8,072,688	-	10,861,395	-	1,712,405
Revised value after accounting for not subjective identified deficiencies		3,489,888		5,632,902		7,449,070

Table 1 – Reconciliation of Fair Value compensation workings

Property valuations for the removal of development restrictions are inherently complex exercises requiring significant professional judgment and careful assessment of multiple variables. Valuations ought not to be understood as some scientific exercise that will inevitably lead to one number, it is an exercise where the valuer needs to exercise subjective professional judgement which can provide significantly different outcomes. This complexity is exemplified in the present case, where four separate valuations for identical restrictive conditions produced significantly divergent results. Such substantial disparities underscore the importance of adopting appropriate and consistent methodologies and applying sound valuation principles and realistic assumptions.

Before proceeding to the technical analysis contained herein, the Fortina Group notes that there are reasonable grounds to conclude that both the Auditor Valuation and the NAO valuation methodology may not conform to the requirements of the Government Lands Act. The NAO Report itself expresses concerns regarding compliance with statutory valuation requirements and acknowledges potential methodological deficiencies in the valuation exercises under review. Notwithstanding these fundamental concerns regarding statutory compliance, the Fortina Group has elected to conduct an objective technical assessment of the valuations as presented, focusing on their inherent computational errors, methodological flaws, and internal inconsistencies, rather than their seriously questionable legal standing. This approach demonstrates that even when evaluated on their own terms and without regard to potential statutory non-compliance, the valuations contain material deficiencies that render their conclusions unreliable and result in compensation amounts that substantially exceed fair market value.

2. VALUATION METHODOLOGIES AND UNDERLYING ASSUMPTIONS

This analysis identifies specific technical issues within the valuation methodologies that materially affect the reliability of the conclusions reached. The revised calculations presented herein focus exclusively on correcting demonstrable computational errors, methodological inconsistencies, and omissions identified across the three valuation reports under consideration. These corrections are applied consistently across all valuations to establish a defensible range of fair market values and valuation principles. No adjustment has been made for the clearly inflated property sales values assumed in the NAO report as a basis of their calculations.

This paper will refer to the three valuations considered in the NAO Report as follows:

- (a) The Architects Valuation;
- (b) The Auditor Valuation; and
- (c) The NAO Valuation.

Without examining in detail whether the respective valuation methodologies align with the Lands Authority's established valuation protocols for comparable assessments as required by law, the Fortina

Group observes that the methodologies employed in both the Architects Valuation and Auditor Valuation appear generally aligned with accepted valuation principles and industry best practices.

The NAO valuation methodology presents certain serious technical concerns, that impinge on its validity and reliability :

- Firstly, it extended beyond the scope of the land parcel subject to the restrictive conditions and incorporated areas unrelated to the site in question and the actual development project under consideration; and
- Secondly, the NAO Report demonstrates a fundamentally flawed approach through multiple references to methodologies focused on maximising potential value, employing terminology such as, "highest potential value achievable," "fully capitalise on the site's potential," "full potential volume," and "maximum value."

The evidence demonstrates that the NAO approach was fundamentally misconceived, being designed to maximise potential value rather than to determine fair market value. This flawed methodology resulted in the systematic adoption of assumptions and considerations that artificially inflated values while failing to apply appropriate deductions that should have been properly made. Such an approach represents a serious departure from accepted valuation standards and fundamentally undermines the integrity and reliability of the resulting valuation. Sound valuation practice mandates the application of realistic professional judgment to **determine fair market value**, not the pursuit of maximum theoretical value that bears no relation to reality.

3. MATERIAL CONSIDERATIONS IN VALUATION ANALYSIS

Several fundamental considerations must be evaluated when determining the fair value attributable to lifting restrictive conditions on real estate. There are a number of factors in the case under review which are essential to any proper valuation analysis, and which can have a material impact on the final outcome unless fully and comprehensively taken into account. The adjustments undertaken in this paper are principally motivated by the factors listed hereunder.

1. Land location and ownership

- (a) The Fortina Group held (and still holds) freehold title to the **entire** site, with certain portions subject to restrictive conditions regarding permitted use and development heights.
- (b) The Government held no ownership rights over the same sites but served solely as beneficiary of the restrictive conditions.
- (c) The prime seafront portion of the site was acquired by the Fortina Group from private parties and remained free of restrictive conditions.
- (d) The proposed residential and commercial development would be undertaken only partially on sites encumbered by restrictive covenants, located in the intermediate and rear portions of the property.
- (e) The landlocked portion of the site subject to restrictive covenants possessed no independent value or utility to third parties or the Government, being entirely surrounded by property belonging to the Fortina Group. Consequently, no market value in use could exist for this portion, which could only derive value through integration with the Fortina Group's adjacent holdings.
- (f) Given these circumstances, it becomes untenable to attribute 100% of the potential value gains from lifting restrictive conditions to the Government. No adjustment has been made in the revised workings to incorporate a more equitable and arm's length attribution of the said value gains.

2. 2017 vs 2019 (or later property prices)

- (a) The Fortina Group formally submitted its application to lift restrictions in April 2017, with the Architects Valuation completed in October 2017 based on contemporaneous 2017 market values. The significantly higher selling prices adopted in the NAO Report suggest that the NAO workings were improperly conditioned by market price increases occurring after 2017, thereby overstating the compensation due at the relevant valuation date.
- (b) The Auditor valuation and NAO valuations were prepared in 2019 and 2025 respectively, but incorrectly based their calculations on 2019 pricing rather than the applicable 2017 values.
- (c) Accordingly, all three valuations have been revised to consistently reflect 2017 pricing, which represents the appropriate valuation date when the waiver was first requested and when market conditions should have been properly assessed for compensation purposes. No adjustment has been made for the evidently inflated assumed selling prices.

3. Land in Use Value

- (a) As explicitly stated on page 42 of the NAO Report, the Government Lands Act mandates that valuation methodology must calculate deemed compensation as **“the difference in values between the existing hotel use and the proposed use.”** This statutory requirement establishes unequivocally that Fortina should have been credited with the full value of the existing hotel asset, not merely its “airspace value’ as applied in the Architects Valuation and the Auditor Valuation.

4. Other

- (a) The NAO Report reveals that the firm of auditors responsible for the Auditor Valuation maintained an ongoing professional relationship with the Lands Authority, raising legitimate questions regarding the Auditor’s capacity to serve as an objective, independent third-party valuer as required by Lands Authority protocols; and
- (b) The NAO Report fails to identify the professional service providers engaged to prepare or assist in preparing the highly technical analysis attributed to the NAO.

The NAO Report provides no explanation for commissioning a third valuation when the existing two valuations (the Architects Valuation and the Auditor Valuation) could have been utilised to assess the validity of their respective conclusions through comparative analysis.

The circumstances suggest that additional analysis may have been deemed necessary to support the conclusions reached, though the specific reasons for this decision are not disclosed in the NAO Report.

Furthermore, it remains questionable whether the NAO possessed the requisite legal authority and *vires* to commission a third valuation in determining the issues posed to it and in conducting its investigation particularly given the potential for such action to exceed the scope of its investigative mandate.

4. IDENTIFIED ERRORS, FLAWS AND INCONSISTENCIES

The following analysis identifies material errors, methodological flaws, and internal inconsistencies within the valuation calculations and methodologies that require correction and adjustment to achieve accurate and consistent outcomes.

4.1 Rebasing Compensation Calculations to 2017 Values

4.1.1 Auditor and NAO calculated compensation based on 2019 pricing levels, as follows:

Compensation workings at 2019 prices	Note	Architects Valuation €	Auditor Valuation €	NAO Valuation €
Assumed land value as per original workings	4.1.1	-	19,178,378	32,616,396
Value in use of existing four star hotel		-	836,816	11,600,333
Assumed compensation due at 2019 prices		-	18,341,562	21,016,063

Table 2 – Assumed Compensation at 2019 pricing

4.1.2 After adjusting the Auditor and NAO figures by 15% to reflect price increases (both sales and costs) between 2017 and 2019, and after including areas for sites in the Architects Valuation which had not been included to ensure consistent comparison, the revised 2017 compensation calculations would be as follows:

Compensation workings at 2017 prices	Note	Architects Valuation €	Auditor Valuation €	NAO Valuation €
Assumed land value as per original workings - (Auditor and NAO values reduced by 15%) and Architects workings increased to cater for both sites.	4.1.2	22,470,945	16,301,621	27,723,936
Value in use of existing four-star hotel - (Auditor and NAO values reduced by 15%)		- 3,500,000	- 711,294	- 9,860,283
Assumed compensation due at 2017 prices		18,970,945	15,590,328	17,863,653

Table 3 – Adjusted property prices at 2017 levels

4.2 Adjustments to Land Value Assumptions

- 4.2.1 The Architects Valuation incorrectly applied the adopted '8:3:2' non-seafront adjustment to the **'residual land value'** rather than to the **'assumed sales price.'** This error effectively discounted both sales proceeds and development costs, when development costs clearly do not vary based on location.
- 4.2.2 The NAO calculations failed to include a sales tax reduction of 8% in accordance with standard practice for valuations of this nature. Page 78 of the NAO report indicates that the NAO failed to differentiate between **'sales tax of 8%'**, which is clearly deductible and **'duty on documents of 5%'** which is clearly non-deductible. This omission effectively results in the Fortina Group being penalised twice for sales tax costs: first through higher deemed compensation based on a value that will never materialise, and subsequently at the point of actual sale.
- 4.2.3 Both the Auditor Valuation and the Architects Valuation correctly included sales tax in their calculations, though an adjustment is required to reduce the Auditor assumed rate from 10% to 8%.
- 4.2.4 All three valuations failed to apply the correct industry standard rate of 5.9% for sales commission. The Architects and NAO valuations applied a 5% rate, effectively omitting the non-recoverable VAT component of 0.9%.
- 4.2.5 The NAO valuation incorrectly included €546,151 (at 2017 levels) as part of its assumed land value, attributed to increased value of the 5-star hotel, which should have been excluded when valuing the lifting of restrictions on the land occupied by the 4-star hotel site.

- 4.2.6 Inconsistent with the other valuers, the Architects Valuation based its net present value discounting on an unrealistic 36-month project duration rather than the 48-month project duration subsequently assumed by Auditor and NAO. Adjustments have been made to eliminate the inconsistencies between the three valuations.
- 4.2.7 The NAO inconsistently applied an incorrect 3.45% rate for net present value discounting adjustment, whereas both other valuers assumed a more realistic and appropriate rate of 5.75%. The 3.45% rate assumed by the NAO is also inconsistent with the 6% interest rate used elsewhere in its own calculations.
- 4.2.8 Adjusting for these errors, omissions, and inconsistencies results in the revised land values at 2017 pricing shown in Table 4 below:

Workings on Revised Land Value at 2017 Prices		Architects Valuation	Audit Valuation	NAO Valuation
		€	€	€
Revised land value at 2017 prices		22,470,945	16,301,621	27,723,936
Adjustments				
Correct application of adjustment formula for intermediate and rear location of encumbered sites	4.2.1 -	5,218,863		
Application of a consistent 8% sales tax for all valuations	4.2.2	-	1,089,119	- 5,171,115
Application of a consistent 5.9% sales commission for all valuations	4.2.4 -	56,020	- 185,150	- 581,750
Reversal of additional value attributable to 5 star hotel	4.2.5	-	-	- 546,151
Application of a consistent 29.9% net present value adjustment for all valuations	4.2.6 -	2,133,486		- 2,403,162
Adjusted land value at 2017 values		15,062,577	17,205,590	19,021,758

Table 4 – Workings following adjustments mentioned in 4.2

4.3 Value in Use Analysis

- 4.3.1 Consistent with the approach adopted for computing revised land values, the values attributed to the 4-star hotel in the Auditor and NAO reports have been adjusted to reflect 2017 pricing and to iron out other inconsistencies.
- 4.3.2 The Architects Valuation and the Auditor Valuation attributed value only to the "airspace" of rooms, failing to recognise the fair value of the existing hotel's "in use" value plus the value of additional rooms and amenities that could be developed on the site. This is not in line with standard valuation requirements of the Lands Authority and has been adjusted accordingly.
- 4.3.3 Based on their own assumed values of €90,000 per room plus €22,500 per airspace unit, the Architects should have attributed a minimum value of €8.775 million to the hotel instead of an 'airspace value' of €3.5 million.
- 4.3.4 Although the Auditor attributed a value of €142,682 per room for a four-star hotel at 2019 prices (page 21), they attributed only €838,000 to Fortina's hotel and amenities at 2019 prices. This contributed to an understatement in value in use of the existing hotel of €13.40 million at 2019 prices.

4.3.5 The NAO attributed a value of €11.60 million (at 2019 levels) to the 4-star hotel. On the basis of their own deemed 4-star hotel room value of €130.300 (at 2019 levels), they should attribute a minimum value of €13.04 million (at 2019 prices) to Fortina’s hotel and amenities.

4.3.6 The average value of hotel rooms in the Auditor Valuation and the NAO Report (at 2017 prices) amounts to €107,344 per room. Applying this average value in use of the hotel plus relative airspace at 2017 prices results in a value of €11.573 million. For consistency purposes this average value has been applied to all three valuations.

4.3.7 Applying the average hotel room value of €107,344 would produce the results set out in Table 5

Adjusted value in use of existing hotel	Note	Architects	Auditor Valuation	NAO Valuation
		Valuation €	€	€
Assumed value in use as per original workings		3,500,000	836,816	11,600,333
15% adjustment to GT and NAO values in order to reflect 2017 prices	4.3.2	-	125,522	- 1,740,050
Adjustment to reflect full value for 81 rooms and 75 airspaces	4.3.3			
Adjustment to reflect value of other hotel amenities developable on site	4.3.4	8,072,688	-	-
Adjustment to reflect value attributed to in use value per room per GT report	4.3.5	-	10,861,395	1,712,405
Adjusted value in use of existing hotel		11,572,688	11,572,688	11,572,688

Table 5 – Adjusted Value in use workings

5. REVISED COMPENSATION PAYABLE

5.1 After implementing the technical corrections identified above to ensure consistency and eliminate computational errors, the *fair market value* compensation at 2017 prices would range between €3.5 million and €7.5 million, as demonstrated in the calculations set forth in Table 5 below:

Adjusted compensation workings at 2017 prices	Note	Architects Valuation €	Auditor Valuation €	NAO Valuation €
Assumed land value as per revised workings		15,062,577	17,205,590	19,021,758
Value in use of existing four-star hotel	-	11,572,688	- 11,572,688	- 11,572,688
Revised computation due		3,489,889	5,632,902	7,449,070

Table 6 – Revised Fair Value

5.2 Apartment Values in Valuation Calculations

5.2.1 Although not reflected in the revised calculations above, the assumed selling prices adopted in the Auditor Valuation are materially affected by two outlier properties with assumed selling prices exceeding €10,000 per square metre, which are clearly not comparable and should, in

line with valuation best practice, have been excluded from the analysis because they are outliers in the market; and

- 5.2.2 The NAO valuation goes even further. Its calculations appear to be based on assumed selling prices in excess of €10,500 per square metre for the entire residential, commercial, and retail development, without taking into account the generally accepted price differential between residential and office developments. This figure is demonstrably inflated and does not reflect realistic values for non-sea view development in 2017. No adjustment has been in the revised workings for this clearly inappropriate assumption.

6. FAIR VALUE

The Fortina Group submits that the objective of any valuation exercise for the waiver of restrictive conditions in a deed must be to establish *fair value* as the basis for the compensation that ought to become payable for such waiver. To address concerns regarding significant variances in valuations, new legislation was introduced through Legal Notice 196 of 2024 and LN 75 of 2025, specifically regulating the revocation or waiver of conditions on property transferred by government, the Lands Authority, or ecclesiastical entities. This legislative framework reduces the impact of subjective valuations and provides a transparent, consistent basis for such assessments.

The Fortina Group does not submit that these rules should be applied retroactively. However, when testing the valuations in the NAO report against an objective standard of reasonableness and *fair value*, the new legislative framework provides a useful benchmark for assessment, albeit at a conceptual level.

Fresh calculations by a leading architectural firm, applying the latest valuation rules, demonstrate that Fortina would have paid a maximum of €4.7 million—significantly less than the €21 million referenced in the NAO Report.

For transparency, Fortina commissioned a valuation in accordance with the said latest valuation rules, using 2025 property prices, which are significantly higher than 2017 values applicable when the application was submitted. This approach reaffirms that even at 2025 prices the final outcome of compensation due to Government would have remained substantially below the €8.1 million compensation amount.

7. CONCLUSION

Based on the comprehensive analysis presented above, the Fortina Group respectfully submits that the €8.1 million compensation amount substantially exceeds any reasonable assessment of fair market value for the waiver of restrictive conditions. The multiple errors, methodological flaws, and internal inconsistencies identified across the three valuation reports demonstrate that the compensation calculation lacks the objectivity and accuracy required for such a significant financial determination.

Upon implementation of technical corrections and elimination of inconsistencies as demonstrated above, the analysis establishes that the valuers revised value for the waiver of restrictions over the sites in question should range between €3.5 million and €7.5 million. Even without considering the impact of clearly unrealistic assumed sales values, both the floor and ceiling of this range fall substantially below the €8.1 million compensation amount agreed to in the deed waiving the restrictions.

The evidence unequivocally demonstrates that the NAO's valuation methodology was fundamentally misconceived and deliberately structured to maximise potential value rather than to determine fair

market value. This deeply flawed approach represents a serious breach of accepted valuation standards and professional practice. The systematic adoption of inflated assumptions combined with the deliberate omission of appropriate deductions that should have been properly applied constitutes a grave departure from generally accepted valuation principles. The methodology employed by the NAO, *ex admissis*, fundamentally compromises the integrity and reliability of the resulting valuation to such an extent that it cannot be considered a credible assessment of fair market value. Such serious methodological deficiencies raise profound concerns.

October 6, 2025