



## Report of the Comptroller and Auditor General Volume 2 (Issued September 2011)

### **Chapter 46 - Protecting the State's Property Interest** **January 2012 Update**

Chapter 46 of the report examines the extent to which the State's property interests are being protected in relation to the capital funding provided to SVHG. The focus of the review was on the HSE procedures and relates solely to its financial responsibilities.

The chapter was brought to the attention of the C&AG by HSE after HSE had discovered that St Vincents Healthcare Group Limited (SVHG) had granted security to banks over a publicly funded asset (€200m clinical building commenced in 2004).

The chapter concluded that:

- SVHG has pledged publicly-funded assets as security for bank finance for the development of its private hospital. The situation illustrates a hazard that attaches to the provision of services through fully subvented or near fully subvented private institutions. Their freedom to pursue their other objectives may be exercised in a way which does not protect the State's financial interest.
- Consequently, it is important that security be taken by the State for the capital funds it provides. Otherwise, further costs may accrue to the State in circumstances where the bank's security is enforced.

#### HSE observation

HSE agrees with C&AG conclusions. HSE has always registered security against third party assets where capital grants are made to section 39 agencies. In the case of the larger voluntary hospital sites HSE has taken security, since 2008, over all the main hospital assets whenever a grant is now made, not just the assets the grants are being made for now.

The first application of this regulation was in the redevelopment of Mater adult hospital in 2009. It was a condition of the grant agreement entered into with the Mater that the Mater provide indefinite security to HSE over all the core hospital assets (not just the newly built element which was subject of it's capital grant). This security entitles the HSE to acquire the property (in this case the core hospital assets) for a purchase price reflecting the market value of the property unbuilt upon.

However, when HSE attempted to put in place this same arrangement with SVHG in 2010 when it was funding the now under construction €30m ward block, it emerged that a €200m, grant for the clinical science building had been made to SVHG in 2004 (pre HSE regulation) without the funded assets being secured in favour of the state (through a legal security instrument).

It was not the practice of DOHC up to 2005 to create security over large voluntary hospitals and this would historically have not been a problem as all such exchequer funded assets had been used for the purpose that the DOHC grant was made up to that point.

However, SVHG in obtaining bank funding for its private hospital, had given funders a floating charge on all its assets which in effect meant SVHG had used the asset built with the 2004 grant to secure funding for its private hospital.

The creation of this security made it impossible for HSE to secure first ranking security for the state over the entire public hospital. HSE put in place security (in the form of an option) over the land on which the new ward block is constructed (similar in nature to the arrangement entered into at the Mater site) but HSE was not permitted (due to the pre-existing bank security) to create the same security over the rest of the public hospital. Following extensive discussions with SVHG and the banks HSE negotiated an arrangement under which (i) it has put in place a Deed of Covenant with SVHG pursuant to which SVHG covenants to use the public hospital lands as a public hospital for the term of the grant agreement relating to the new ward block (which is indefinite) and (ii) in the event of the banks seeking to enforce their security over the public hospital campus (e.g. as a result of some default by SVHG under its financing arrangements with the banks) the banks will first offer to HSE the right to purchase the public hospital campus at the market value of the lands unbuilt upon (i.e not buildings)..

HSE reported the situation to the C&AG who then completed a review and published this chapter. Since the report was published in September 2011 the following progress has been made on the findings above.

HSE wrote to all the Voluntary Hospitals requesting details of all commercial liens. No additional such liens were declared by any of the institutions. The situation at SVHG cannot be repeated on any assets funded since 2008, due to the 2008 protection of states interest introduced by HSE.

The HSE continues to enhance it's processes for securing the state's interest. In order to simplifying the process of protecting the States Interest, HSE Estates in partnership with the HSE's Legal Unit reviewed and revised the current documentation in use and have drafted new generic documents which will be used from here on. This documentation includes a Guidance document and template

- Grant Agreement Document
- Deed of Charge Document
- Option Agreement Document
- Bill of Sale Document

All of the above form part of the HSE financial regulations and voluntary providers sign SLAs that commit them to adherence to these financial regulations. Attached is a copy of these regulations.