



6. Management of Overseas Projects Corporation of Victoria Ltd's major assets sale



6.1 Audit conclusions

The Overseas Projects Corporation of Victoria Ltd has experienced considerable financial difficulty over recent years. Advice from its board that it was not a core government business, contributed to the government's decision in October 2003 to sell the company.

The objective of the sale was to achieve the best possible return, while at the same time fulfilling a number of other aims, including to achieve a speedy sale, maintain high standards of probity, minimise continuing risks to the state and ensure the ongoing operation of the company's business.

In June 2004, the company concluded an asset sale agreement with a private party, for \$1.4 million¹. This agreement sold the company's interest in most of its ongoing major projects and partnering arrangements, and its trading name. It also transferred almost all of the company's permanent employees to the buyer. The buyer also agreed to manage, on the company's behalf, those projects retained by the company on a fee-for-service basis.

Our audit examined the adequacy of the sale process, the outcomes achieved, and the arrangements established for the eventual wind-up of the company and the management of any residual issues.

To achieve a satisfactory sale outcome, it was important for the sale to be completed expeditiously given the nature of the company's business, and the importance of ensuring that the skills and experience of its employees were retained during this period. It was equally important that due process, including a high standard of equity, transparency and probity, was maintained throughout. This report concludes that while the sale was conducted expeditiously, under difficult circumstances, some procedural matters were deficient.

While acknowledging that there were several strengths in the process adopted for the sale (including comprehensive sale documentation and the engagement of a probity adviser), and that the sale process was made more difficult by the company's considerable financial difficulties, there are lessons to be learned for future asset sales, including:

- key sale documents (such as those that seek expressions of interest or proposals) should be formally approved prior to their issue to the market

¹ Net of employee entitlements, valued by the company at \$170 000.

- probity plans issued to bidders should be followed, particularly in respect of the role of probity advisers and the contract negotiation processes
- the conclusions and recommendations of the bidder selection committee should be formally documented and signed-off by its members
- where the nature of a sale changes during the sale process (for example from a sale of a company to a sale of the company's assets), at least all short-listed bidders should be given the same opportunity to submit proposals
- committees established to oversee the conduct and management of the sale of an entity should take a leadership role, not become an integral part of the conduct of the sale and should be independent of the entity's board or management, therefore ensuring the government's ownership interests are protected
- advisers to a sale process, which have an affiliation or interest which might create a possible perception of a conflict of interest, should not participate in the process
- the successful bidder should not be allowed to take over the entity (or the purchased assets) before the sale agreement had been finalised.

The cash proceeds of the sale, which were received by the company and totalled \$1.4 million, fell below the company's revised valuation of the projects sold (\$1.5 million) and the original estimated proceeds for the sale of the company as a whole (\$2.5 million). Further, the state continues to bear risks arising from the unsold projects of the company. Nevertheless, based on the 2 offers received, the state achieved the highest available cash return on the sale.

The state has contributed some \$9.9 million as capital to the company since its inception in 1985. In addition, in June 2004, the state provided a grant of \$400 000 to the company to meet some of its debts. In return, the company has contributed dividends totalling some \$800 000 to the state since 1992. However, at 30 June 2004 (after taking into account the proceeds from the sale), the company's net assets amounted to \$1.3 million, with a further \$317 000 estimated as being needed to complete its wind-up. Clearly, the majority of the state's investment in the company has been lost. We acknowledge that the operations of the company have contributed to the generation of economic benefits for Victoria.

The wind-up of the company's affairs was incomplete at the time of preparing this report and an up-to-date plan (and budget) needs to be prepared and approved for this purpose.

6.2 Background

The Overseas Projects Corporation of Victoria Ltd was established in 1985 as a state-owned company. Its mission was to export Victorian public and private sector skills (such as project management skills), technologies and equipment to external markets. Most of its work has focused on projects conducted in developing countries.

In recent years, the company has experienced considerable financial difficulties. These have required the government to provide additional capital injections and other financial support to the company to ensure that it remained solvent. Our previous reports to parliament have commented in detail on these financial difficulties, and the reasons why².

In light of advice from the company's board and senior management that the company was not a core government business, the government approved a proposal to sell the company in October 2003. During February 2004, with the government's support, the sales strategy changed to a sale of the company's assets and other business interests (rather than a sale of the company as an entity). This decision was taken based on advice that a sale of the company was highly improbable and that the most feasible, and best, option for the state was an asset sale.

The sale process concluded with the finalisation, in June 2004, of an agreement to sell the majority of company assets to a preferred bidder, a professional services consulting firm. The sale agreement specified the assets to be sold, including the net assets of 22 major projects (including intellectual property rights and novation of relevant project contracts), some plant and equipment, the company's trading name and the lease of the company's premises. The agreement also provided for almost all of the company's remaining permanent employees to be transferred to the buyer.

In addition, the buyer agreed to manage, on the company's behalf on a fee-for-service basis, the projects retained by the company (26 projects, most of which were physically complete).

Proceeds from the sale totalled \$1.4 million and were received by the company in June 2004 (\$1.2 million) and August 2004 (\$200 000).

² Victorian Auditor-General's Office, 2004, *Report on Public Sector Agencies, Results of special reviews and financial statement audits for agencies with 2003 balance dates other than 30 June*, Victorian Government Printer, Melbourne, May 2004. Victorian Auditor-General's Office, 2004, *Auditor-General's Report, Results of 30 June 2004 financial statement and other audits*, Victorian Government Printer, Melbourne, December 2004.

While it had been proposed that the company would be wound-up voluntarily and a liquidator be appointed at a shareholder meeting during September 2004, finalisation of a number of matters delayed the appointment of a liquidator until February 2005. At the date of preparing this report, the wind-up of the company's affairs was incomplete.

6.3 Purpose of audit

This audit examined the sale to assess whether:

- appropriate processes were followed in the sale process
- a reasonable sale outcome was achieved for the state, and what has been the level of financial support provided by the state
- appropriate arrangements were established or planned to manage the eventual wind-up of the company and any related residual issues.

6.4 Were appropriate processes followed for the sale?

6.4.1 Were sale arrangements adequate?

In assessing the adequacy of the arrangements adopted for the sale, we examined if:

- the decision to sell the company (or its assets) was supported by a clear and valid rationale, and was approved by the responsible minister
- a steering committee with appropriate representation from relevant central government agencies (the Department of Industry, Innovation and Regional Development, and the Department of Treasury and Finance) oversaw the sale
- there was adequate communication to all relevant stakeholders (including the company's existing clients), to ensure that the sale outcome was maximised
- the responsible minister approved the sale agreement.

The Minister for State and Regional Development and (on the minister's recommendation) the government approved a proposal to sell the company in October 2003. Those approvals were given in light of the company's poor performance in recent years. They were based on the advice of the company's board and senior management that the company was not a core government business, and that selling it would enable it to raise the capital needed to compete at a global level.

The sale objective (as set out in the expression of interest document) was to maximise the net return to the state, consistent with:

- ensuring a high standard of equity, transparency and probity in the sale process
- minimising the potential impact on the state of the company's business risks after the sale
- a relatively speedy and efficient sale process
- ensuring that the successor business will be established in such a way as to provide a sound basis for:
 - the ongoing sustainability of its operations
 - the satisfactory completion of existing projects and the further development of the company's client relationships
 - the continued contribution to the export of Victorian-based professional and government advisory services
 - equitable treatment for the company's staff and the ability to provide for ongoing career development.

A working group was established in December 2003 to oversee (and undertake a key role in) the sale process. Membership of the working group comprised the company's chairman (who chaired the group), the acting managing director, and a senior manager from each of the Department of Innovation, Industry and Regional Development and the Department of Treasury and Finance³. A number of consultants also provided expert advice to the working group. The company's board was made responsible for managing the sale process. These arrangements had the support of the Department of Innovation, Industry and Regional Development and the Department of Treasury and Finance.

The working group undertook the evaluation of expressions of interest and proposals, and members informally reported the group's progress and findings to the respective stakeholder agencies.

Although there was no evidence of a conflict of interest, given that the company's board (and particularly its chairman and acting managing director) played a key role in the sale process (which sought to divest the company's entire business and assets), there was a risk of a conflict of interest situation or perception arising. This was because the board was required, as part of the sales process, to consider proposals from existing business partners and competitors.

³ Late in the sale process, the Department of Treasury and Finance senior manager retired from the department and was not replaced on the working group.

These arrangements are also not consistent with good practice and guidance issued by the Department of Treasury and Finance, which aims to eliminate the occurrence of possible or actual conflict of interest situations. The Department of Treasury and Finance guidelines on *Procedural Integrity and Process Auditing in Privatisations and Contracting Out* (issued in 1997) state that representatives of an entity to be sold should not be on the selection committee for the sale, for reasons of potential or perceived conflicts of interest.

Separate guidance issued by the Department of Treasury and Finance on *Best Practice Advice - Probity*, further states that conflict of interest situations arise where a participant in (or adviser to) a project team has an affiliation or interest which might be seen to prejudice his or her impartiality. The guidance recognises that conflicts of interest can occur and, provided they are identified early and dealt with effectively, do not necessarily suggest or indicate any wrongdoing.

At several key points in the sale process, the Secretary to the Department of Innovation, Industry and Regional Development and the Minister for State and Regional Development were briefed by their departmental representative on the working group, and/or the board on the progress of the sale.

While the proposed high level plan prepared for the sale did not specifically include a communication strategy, key stakeholders (including clients, business partners and employees) were kept informed about the sale's progress.

In May 2004, a special meeting of the board was convened with shareholders (representing the minister on behalf of the state) to approve the sale agreements, subject to any subsequent amendments agreed by the company. The acting managing director subsequently signed the sale agreements in early June 2004 on behalf of the company. The board and the minister were later advised that the sale agreement documents had been executed.

Conclusions

The decision to sell the company was based on a clear and valid rationale, and adequately communicated to relevant stakeholders.

The company did not represent a major undertaking of the state and, therefore, its sale did not require as extensive a governance regime as would be expected for a major asset sale. On balance, an adequate governance structure was initially created whereby a working group, including senior departmental representatives, was established to oversee the company's management of the sale process.

However, by undertaking the assessment of expressions of interest and proposals, the working group (which included members of the company's board), became an integral part of the sale process rather than overseeing the company's management of the sale process. This exposed the group to a potential conflict of interest risk. This situation should not have occurred, and the 2 portfolio departments should have played a greater leadership role to protect the government's ownership interest in the company.

The lesson for future similar sales is that committees established to oversee the conduct and management of a sale of an entity should take a leadership role, not become involved in the conduct (that is, become an integral part) of the sale, and should be independent of the entity's board or management.

The sale agreements were appropriately approved.

RESPONSE provided by the Secretary, Department of Innovation, Industry and Regional Development

The Department believes a reasonable outcome was reached due to sound governance practices for the duration of the sale and adequate direction throughout the sale process. The Board's involvement in the sale directly contributed to the objectives of a smooth transition, retaining as many employees as possible and retaining a presence in Victoria.

RESPONSE provided by the Chairman, Overseas Projects Corporation of Victoria Ltd

The Board disagrees about the lesson for future similar sales about whether a Board should be involved in the sale. It depends on the objectives of the sale and whether any member of the Board has an ongoing interest in the entity beyond the sale. In this circumstance, involvement of the Board contributed to the objectives of a smooth transition, retaining as many employees as possible and retaining a presence in Victoria.

6.4.2 Were probity arrangements adequate?

In assessing whether high standards of probity were maintained during the expression of interest, proposal clarification, contract negotiation and other sale process phases, we examined if:

- the sale plan (and/or business case) clearly set out the sale strategy, provided for a consistent and transparent process, and was prepared and approved before the request for expressions of interest was released
- expression of interest and request for proposals documentation was consistent with the sale plan, sufficiently comprehensive (including for example, conditions of sale, evaluation criteria and contract requirements) and was properly approved before being issued
- evaluation committee members had adequate skills, no conflict of interest, reviewed bids solely against the stated evaluation criteria and were supported by expert advice as required
- the evaluation process was timely (in line with the sale plan), appropriate and fair
- the evaluation committee's reports clearly set out a valid rationale for the acceptance or rejection of bids, consistent with achieving the best sale outcome taking account of any risk or cost transfers to the state.

In order to minimise any possible adverse impact on operations and subsequent loss of value, the company's board supported a streamlined sale process. Given that the sale objectives included ensuring high standards of equity, transparency and probity, the board was required to maximise the outcome of the sale for the state (and for the company's employees) while also ensuring that the public interest was protected by adopting due process at all stages of the sale.

A proposed high level plan for the sale was prepared during November 2003 which set out the sale process, governance arrangements, timetable, evaluation criteria, a broad estimate of the cost of the sale and the proposed content of the request for expressions of interest document. This plan was provided to the company's board, the Department of Innovation, Industry and Regional Development and the Department of Treasury and Finance. However, we found no evidence that the sale working group (or the company's board) had formally approved the proposed plan. The company's board did however agree to an indicative timetable for the sale process, the formation of the sale working group, appointment of consultants and the advertisement to seek expressions of interest.

A probity plan was also prepared. The plan set out the major phases of the sale process, potential probity issues and key probity steps and sign-offs. Details of the probity plan were included in the request for proposal document. This committed the company to the plan, although we found no evidence once again that the sale working group (or the company's board) had formally approved the plan. Similarly, we found no evidence that either body had formally approved the expressions of interest document or request for proposals document. However, both these latter documents were issued under the cover of a letter signed by the company's chairman, and were comprehensive and consistent with the sale plan.

We observed several other weaknesses in the sale process, including:

- Reports detailing the probity advisor's conclusions on the sale process, a requirement of the probity plan, were not prepared.
- The evaluation panel (comprising the sale working group, less the company's chairman) did not prepare and sign reports on the results of their evaluation of the expressions of interest and proposals, and other key decisions. The company's acting managing director (also a working group member) did, however, brief the company's board on the working group's activities, findings and recommendations, as part of his regular monthly report to the board.
- The sale working group's key adviser (a consultant) had a potential conflict of interest during the sale process, related to the successful bidder. Prior to seeking proposals from short-listed respondents, the advisor was working closely with the successful bidder on another project for a third party. There was no evidence that either the working group or the company's board formally considered this potential conflict of interest. We were, however, advised that this matter was considered by the working group, which concluded that there was no potential or actual conflict of interest. The advisor, who had participated in the evaluation of expressions of interest, continued to advise the evaluation panel at the request for proposals phase.

- All short listed respondents to the expression of interest process were not given the opportunity to submit purchase bids. The company's board, at its meeting of 28 January 2004, was advised that 8 respondents met all of the requirements of the expressions of interest and accepted a recommended short list of 4 respondents (the remaining 4 respondents were to be held in reserve). The Secretary of the Department of Innovation, Industry and Regional Development endorsed the board's decision to short list 4 respondents on 2 February 2004.

The board, at its meeting of 24 February 2004, endorsed a recommendation to change the nature of the sale from a sale of the company to a sale of the company's assets. The board at its meeting of 2 March 2004 was advised that further meetings had been held with the 4 selected short-listed respondents and that one of the short listed respondents, together with the reserve respondents, would be advised they were unsuccessful. This decision was taken in order to advance the sale in line with the company's timetable and was despite all 4 respondents having indicated their willingness to submit proposals to buy the company. The Secretary of the Department of Innovation, Industry and Regional Development was advised on 3 March 2004 that the company's board had endorsed a recommendation to proceed with the 3 short listed respondents.

Consequently, only 3 short-listed bidders (from around 20 entities that had lodged expressions of interest in buying the company) were given the opportunity to prepare proposals when the nature of the sale changed, from a sale of the company to a sale of the company's assets. This is contrary to good practice and Department of Treasury and Finance probity guidelines which provide that at least all short-listed entities should be given the opportunity to submit proposals if the nature of the sale changes. This ensures that at least all the short-listed entities have the same opportunities and information. It also provides greater assurance to the state that the best possible sale outcome will be achieved⁴.

- While the probity plan required 3 members of the working group to conduct final negotiations in the presence of the probity adviser, this did not occur as one member of the group solely negotiated the sale agreement (and progressively advised members of the company's board and/or the working group on the status of the negotiations).

⁴ While proposals were sought from 3 short-listed parties, in fact only 2 were ultimately received for the purchase of the company's assets.

After the decision about the preferred bidder was taken at the end of April 2004, the company allowed the bidder to take control of the purchased projects, employ the company's staff and commence management of the company's other projects approximately one month before the sale agreement had been finalised (although a letter of intent had been signed by the parties). Negotiations about the terms and conditions of the sale (including the assets to be sold) continued to take place after the purchaser had assumed control of the company's business. This was contrary to probity advice received by the sale working group, and would undoubtedly have had the potential to weaken the negotiating position of the state.

We were advised that the company permitted the above in order to enable an orderly transition of staff and projects; to provide continuity for the company's clients; to maximise employment prospects for its employees and to minimise further loss of the company's staff.

After the letter of intent was signed on 3 May 2004:

- 2 additional projects were purchased and one project was dropped from the list of projects to be purchased (changing the purchase price)
- the state was obliged to maintain the solvency of the company until 30 June 2005
- a further agreement was executed for the management of the company's remaining projects.

Although the original timetable for the sale was to execute the sale agreement in mid-March 2004, this did not occur until early June 2004. This was largely due to the changed nature of the sale, from a share sale to an asset sale, and the challenge of seeking to sell a company in considerable financial difficulty.

Conclusion

The objective of the sale process was to achieve the best possible return, while at the same time fulfilling a number of other aims, including to achieve a speedy sale, maintain high standards of probity, minimise continuing risks to the state and ensure the ongoing operation of the company's business.

To achieve a satisfactory sale outcome, it was important for the sale to be completed expeditiously given the nature of the company's business and the importance of ensuring that the skills and experience of its employees were retained during this period. It was equally important that due process, including a high standard of equity, transparency and probity, was maintained throughout. In our opinion, while the sale was conducted expeditiously under difficult circumstances, some procedural matters were deficient.

While acknowledging that the sale process was made more difficult by the company's considerable financial difficulties, and that there were also several strengths in the process adopted (including comprehensive sale documentation and the engagement of a probity adviser), there are lessons to be learned for future asset sales, including:

- key sale documents (such as those that seek expressions of interest proposals) should be formally approved prior to their issue to the market
- probity plans issued to bidders should be followed, particularly in respect of the role of probity advisers and the contract negotiation processes
- the conclusions and recommendations of the bidder selection committee should be formally documented and signed-off by its members
- advisers to a sale which have an affiliation or interest which might create a perception of a possible conflict of interest should not participate in the sale process
- where the nature of a sale changes during the sale process (for example, from a sale of a company to a sale of the company's assets), at least all short-listed bidders should be given the opportunity to prepare proposals
- the successful bidder should not be allowed to take over the entity (or the purchased assets) before the sale agreement is finalised.

RESPONSE provided by the Secretary, Department of Innovation, Industry and Regional Development

The report misinterprets the short-listing process. Of around 20 entities that lodged expressions of interest in buying the company, 4 were identified as fully satisfying the EOI requirements. After deliberation, a shortlist of 3 was agreed and all 3 were given the opportunity to prepare proposals.

The Board decided on 2 March, 2004 that there were 3 short-listed bidders. All respondents to the Expression of Interest that were not short listed to progress to the Request for Tender stage were informed in writing.

RESPONSE provided by the Chairman, Overseas Projects Corporation of Victoria Ltd

The draft report misinterprets the short-listing process. Of around 20 entities that lodged expressions of interest in buying the company, 4 were identified as the group the shortlist would be chosen from. After deliberation, a shortlist of 3 was agreed and all 3 were given the opportunity to prepare proposals.

The Board decided on 2 March 2004 that there were 3 short-listed bidders. All respondents to the Expression of Interest that were not short listed to progress to the Request for Tender stage were informed in writing.

The Board agree with the conclusions about future sales. However, the Board do not accept the implication that such things did not occur with the sale of the OPCV. For example, key sale documents such as the EOI proposal were approved before issue to the market. Also, all short-listed bidders were given the same opportunity to prepare proposals.

In relation to the conclusion as to whether the successful bidder ought to take over the entity after a letter of intent is signed but before the sale agreement is signed, the Board believe that it depends on the circumstances. The Board concluded that allowing the purchaser to take over the entity would maximise the likelihood of sale and maximise the ongoing employment of employees and the novation of all contracts by the clients (all key objectives of sale).

6.5 Were the sale outcomes reasonable?

In assessing the reasonableness of the sale outcomes, we examined if:

- the sale proceeds, together with any risks or costs assumed by the state, compared favourably with other offers received and the value of the assets sold
- the state eliminated or minimised any financial or other risks relating to the assets sold or the ongoing operations of the company
- the cost of conducting the sale was within budget and properly recorded.

Based on the 2 offers received from bidders, while confronted with conditional bids containing some uncertainties and differing risks profiles, the state achieved the highest available upfront cash proceeds.

A review of the company's accounting estimates (by its accounting advisers) during the sale period led the company to write-down its valuation of the sold projects by \$1.4 million, to \$1.5 million at 30 June 2004. This compares with the total cash sale proceeds of \$1.4 million.

The cash sale proceeds were below the estimate of \$2.5 million originally provided to the minister during October 2003, based on a sale of the company as a whole (as opposed to an asset sale).

An objective of the sale was to minimise the potential impact on the state of the company's business risks after the sale. The following risks were to be borne by the state under the sale agreements:

- The company has indemnified the purchaser against any loss or claim in relation to every debt or liability of the company's business incurred before 1 May 2004, except if incurred by the purchaser. This indemnity includes any liabilities in respect of the major projects sold.
- The state must maintain the solvency of the company until 30 June 2005; more than 12 months after the assets were sold.
- The company continues to be responsible for the projects it was unable to sell (26 projects, most of which are now physically complete).

During February 2005, the buyer entered into a deed of release with the company, whereby the company was discharged from responsibility for any loss or claim connected with the major projects sold for the period prior to 1 May 2004, except for any liability arising from claims made by contractors, employees and government agencies. This deed of release became operative upon payment of \$75 000 by the company to the buyer.

In December 2003, the sale was budgeted to cost \$310 000. In January 2004, this was revised to \$390 000. This budget was to cover the cost of consultants to provide legal, accounting, due diligence, probity and sale coordination services, and some printing costs. A total of \$453 000 was actually spent on consultants and other sale costs. The increase in costs was mainly due to significantly higher legal and probity advice costs, and some increases in accounting advice costs. The extended sale period and the change in the nature of the sale also contributed to these additional costs.

Conclusion

While retaining some risk, the company sold its interest in most of its major ongoing projects and partnering arrangements, and achieved the highest upfront cash proceeds based on the 2 proposals received.

However, as not all short-listed bidders were invited to prepare proposals on the basis of a sale of the company's assets, we are unable to conclude on whether or not the outcomes of the sale for the state were maximised.

RESPONSE provided by the Secretary, Department of Innovation, Industry and Regional Development

The Department notes with satisfaction the conclusion that the sale outcomes were reasonable. Great effort was taken throughout the sale to ensure a fair and equitable process and to ensure that all short listed bidders were given the same opportunity to prepare proposals.

RESPONSE provided by the Chairman, Overseas Projects Corporation of Victoria Ltd

Agree with the first paragraph of audit's conclusion.

The Board do not accept the second paragraph as in fact, all 3 short listed bidders were given the same opportunity to prepare proposals.

6.6 What has been the level of financial support provided by the government to the company?

We examined the total level of financial support provided by the government to the company since its establishment, and any associated undertakings made, and risks and costs assumed, by the state as part of the sale process. We verified that this level of financial support had been reported to, and approved by, the responsible minister.

At 30 June 2004, the company had about \$1.3 million in net assets (refer Figure 6A)⁵. This was despite:

- the state having provided the company with total capital contributions of \$9.9 million up to 30 June 2004, including \$4.4 million provided in June 2004
- the state providing a grant of \$400 000 during June 2004 to meet some debts of the company
- the proceeds from the sale of the major projects already being taken into account in calculating the company's June 2004 net asset position.

⁵ Refer to commentary on the company's financial difficulties, included in Victorian Auditor-General's Office, 2004, *Report on Public Sector Agencies, Results of special reviews and financial statement audits for agencies with 2003 balance dates other than 30 June*, Government Printer, Melbourne, May 2004, and Victorian Auditor-General's Office, 2004, *Auditor General's Report, Results of 30 June 2004 financial statement and other audits*, Government Printer, Melbourne, December 2004.

FIGURE 6A: FINANCIAL POSITION OF THE OVERSEAS PROJECTS CORPORATION OF VICTORIA LTD (\$'000)

	30 June 2004	30 June 2003
Contributed capital	9 886.1	5 500.0
Accumulated deficit	(8 640.8)	(942.8)
Net assets	1 245.3	4 557.2
Operating deficit	(7 698.0)	(3 488.6)

Source: The company's annual financial report.

One of the sale objectives was to minimise the potential impact on the state of the company's business risks after the sale. As noted earlier in this report, under the sale arrangement the state continues to bear certain risks arising from the unsold projects of the company.

At a number of key points in the sale process, the Secretary to the Department of Innovation, Industry and Regional Development and the Minister for State and Regional Development were briefed on the financial position of the company and the progress of the sale, including the board's request for an indemnity. Further, a special meeting of the board was convened with the shareholders (representing the minister on behalf of the state) in May 2004, which approved the sale agreements, subject to any subsequent amendments agreed by the company. The minister was subsequently advised that the sale agreements had been formally executed.

The Treasurer issued an indemnity for the company's board and officers in respect of the sale. The Secretary to the Department of Innovation, Industry and Regional Development issued a letter to the purchaser, which undertook to maintain the solvency of the company until 30 June 2005.

Conclusion

The state has contributed some \$9.9 million as capital to the company since its inception in 1985. In addition, in June 2004, the state provided a grant of \$400 000 to the company to meet some of its debts. In return, the company has contributed dividends totalling some \$800 000 to the state since 1992. However, at 30 June 2004, the company's net assets amounted to \$1.3 million (after taking into account the proceeds from the sale), with a further \$317 000 estimated as being needed to complete its wind up. Clearly the majority of the state's investment in the company has been lost. We acknowledge that the operations of the company have contributed to the generation of economic benefits for Victoria.

RESPONSE provided by the Secretary, Department of Innovation, Industry and Regional Development

The department notes with satisfaction the general conclusion.

6.7 Are residual issues being effectively managed?

In assessing whether the residual matters for the company are being adequately managed, we examined if:

- a plan had been prepared to manage the key residual issues
- wind-up processes were in place and activity taking place in line with the approved timetable
- the responsible minister had approved processes to wind-up or dissolve the company.

In June 2004, the company's chairman and acting managing director discussed their plan to wind-up the company with the Minister for State and Regional Development. That plan provided for the:

- payout of the 2 remaining permanent staff of the company in June 2004 - took place in that month
- settlement of all claims and debts of the company by mid-July 2004, including closing international bank accounts - incomplete at the time of preparing this report
- transfer of residual matters to the Department of Industry, Innovation and Regional Development by the end of July 2004 - had not occurred at the time of preparing this report (the acting managing director and chief financial officer continue to manage the company's residual issues)
- finalisation of the company's 2003-04 financial statements by the beginning of August 2004 - occurred in mid-September 2004
- finalisation of the remaining company projects by November 2004, including related legal disputes - incomplete at the time of preparing this report.

The original estimate of the cost of winding-up the company (including resolution of the remaining projects) was \$427 000. This included a contingency allowance of \$127 200 as some project related costs were very difficult to quantify at that time.

It had been proposed that the company would be wound-up voluntarily and a liquidator appointed at a shareholder meeting in September 2004. However, that meeting was adjourned before those motions were put, to allow time for the resolution of certain matters related to the appointment of a liquidator and the company's asset sale. The liquidator was ultimately appointed during February 2005.

At the time of preparing this report, 3 board members continued to hold office. In addition, the acting chief financial officer continued to assist in the wind-up of the company's affairs.

A status report on the winding-up of the company's affairs, including a current estimate of net costs totalling \$317 000, was presented to the Minister for State and Regional Development during March 2005.

Conclusion

A number of matters remain to be concluded before the company can be wound-up. These have taken longer to resolve than originally estimated.

Recommendation

- 1. That the board of the Overseas Projects Corporation of Victoria Ltd, together with the liquidator and the Department of Industry, Innovation and Regional Development, prepare a revised plan for winding-up the company's affairs for the approval of the Minister for State and Regional Development.**

RESPONSE provided by the Secretary, Department of Innovation, Industry and Regional Development

The Department accepts the conclusion and recommendation to work with the Board and the liquidator in the preparation of a revised wind-up plan.

RESPONSE provided by the Chairman, Overseas Projects Corporation of Victoria Ltd

The Board accept the conclusion and recommendation, and a revised plan for winding up the company's affairs was submitted to the minister on 21 March 2005.
