



HERBERT SMITH
FREEHILLS
KRAMER

Tabled 24/11/25
TT-Line Chair

Martin Thompson
Auditor-General
Tasmanian Audit Office
Level 2, 144 Macquarie Street
Hobart, TAS 7000

24 November 2025
Matter 82801230
By Email

Dear Mr Thompson

TT-Line Company Pty. Ltd. - Auditor-General's report on the financial statements of State entities (Volume 2)

We act for TT-Line Company Pty. Ltd. (**TT-Line**).

We refer to:

- Volume 2 of the Auditor-General's report on the financial statements of State entities dated 10 November 2025 (**Report**); and
- your appearance at the Tasmanian Legislative Council Estimates Committee A on Monday, 17 November 2025 (**Estimates Committee**).

In the Report, you expressed the opinion that TT-Line was likely to be able to meet its debts as and when they fall due for the forthcoming 12 month period to August 2026, but that you had reasonable grounds to suspect it would not be able to meet its longer term debts that fall due after this time. On this basis, you opined that TT-Line was insolvent as at 19 August 2025. Subsequently, during your attendance at the Estimates Committee, you said that you formally formed the view that TT-Line was insolvent on 11 July 2025.¹

For the reasons set out in this letter, we consider these opinions expressed in the Report and at the Estimates Committee to be incorrect.

Treatment of long-term debt

On pages 47-48 of the Report you made the following statements:

'During the conduct of my audit, I formed the opinion that TT-Line, was likely to be able to meet its debts as and when they fall due, across the relevant period to August 2026. Concurrently, I developed reasonable grounds to suspect that the company would not be able to meet its longer-term debts that fall due after the relevant period. I issued my audit report on the financial statements of TT-Line on 19 August 2025, at that date it was my opinion that TT-Line was insolvent, in that it had incurred debt that it did not have the ability to repay. My audit responsibilities are to form an opinion on the financial statements, not maintain ongoing oversight, as such this matter will be reviewed again when conducting our audit activities in relation to the 2025-26 financial reporting period.'

First, it is well established that the period of 12 months forward from the "snapshot date" is generally the appropriate period of assessment of a company's ability to pay debt as and when it becomes due and payable, and therefore the usual period to be applied when assessing its solvency.² That legal principle, correctly applied, ought to have led

¹ Parliament of Tasmania, Legislative Council Estimates Committee A Transcript, 17 November 2025, page 107.

² *The Bell Group Ltd (in liq) v Westpac Banking Corp (No 9)* (2008) 39 WAR 1.



you to a conclusion of solvency as at mid-August 2025. Rather, you were led into error by elevating uncertainty as to the company's ability to pay debts maturing after that 12-month period, as being tantamount to a seemingly known inability to do so as existing as at mid-August 2025. In effect, the statements you make in the Report are a prediction of the prospect of inability to pay a future debt when it becomes payable rather than a soundly based application of the relevant principles when assessing solvency in the relevant period.

Secondly, your conclusions as to solvency in the Report fail to account for the approach to be taken to long-term debts when assessing solvency in *Anchorage Capital Master Offshore Ltd v Sparkes* [2023] NSWCA 88 (*Anchorage*).

In *Anchorage*, the New South Wales Court of Appeal endorsed the principle of differing degrees of certainty for short-term debts as compared to long-term debts when assessing solvency. Specifically, a distinction is drawn between 'present insolvency' and 'prediction of the prospect of inability to pay a future debt when it becomes payable', with the correct question being whether 'at the date of alleged insolvency, it can be said that the company is already in a state of inability to pay those debts when they fall due'.³ It was held that, generally speaking, the longer the period to elapse before a debt becomes due, and the greater the potential for intervening events to impact the company's ability to pay it, the less sound a basis it will provide for a conclusion of present insolvency.⁴

Anchorage makes clear that, before drawing a conclusion of insolvency based on long-term liabilities, a high degree of assuredness or probability that the company would be unable to repay them when they fall due is required. The judgment has the practical effect of diminishing the relevance of long-term future debt in assessing the solvency of financially challenged companies.

The Court of Appeal's approach in *Anchorage*⁵ to the treatment of long-term debt when assessing solvency has been followed in several cases⁶ and no court has questioned the correctness of its approach to that issue.

Considering the principles emerging from the *Anchorage* decision, your conclusions that TT Line was insolvent as at 11 July 2025 and 19 August 2025 are misconceived given that:

- the relevant period for the Report is the 12 months to August 2026 (**Relevant Period**);
- you formed the opinion as expressed on page 47 of the Report that TT-Line was likely to be able to meet its debts as and when they fall due across the Relevant Period, which satisfies the cash flow test for solvency,⁷ which ought to have led you to a conclusion that the company was solvent;
- as stated on page 48 of the Report, your audit responsibilities are to form an opinion on the financial statements, not to maintain ongoing oversight, and as such you will review TT-Line's financial statements again in the 2025-6 financial reporting period;

³ *Anchorage*, [245].

⁴ *Anchorage*, [246].

⁵ We note that the High Court refused an application for special leave to appeal the NSW Court of Appeal's decision in *Anchorage*.

⁶ See *Re IOUpay Ltd ACN 091 192 871 (Admins Apptd)* [2023] NSWSC 568; *Re Keybridge Capital Ltd (No 2)* [2025] NSWSC 354.

⁷ *Corporations Act 2001 (Cth)* s 95A; *Wild K9 Pty Ltd (in liq) v Thompson* [2025] VSC 178, [75] citing *Crema Pty Ltd v Land Mark Property Developments Pty Ltd* (2006) 58 ACSR 631, 651-2.



- TT-Line is currently working with its specialist advisers to develop and implement strategies targeting financial sustainability, including having obtained an increase of \$410 million to its borrowing limit (the obligation to repay which is guaranteed by the Tasmanian Government) and an equity contribution of \$74.5 million from the Tasmanian Government. In addition, members of the Tasmanian government have provided assurances of the government's support of TT-Line's ability to continue to pay its long-term debts; this includes the Treasurer, who said at the Estimates Committee that '*no government irrespective of its hue would allow [TT-Line] to fail*'.⁸ There are multiple strands to the plans being developed, which address the need for more capital, debt extension, asset realisation and operational improvement. The measures are being proactively advanced, with an intended path of being able to restructure the company and put it on a sustainable operational foundation; and
- these strategies will inform your review of TT-Line's financial statements in August next year in respect of your audit of the 2025-6 reporting period, which is the period after which part of TT-Line's long-term debt is currently scheduled to begin to fall due.

Consideration of all the circumstances

In addition to the wrong treatment of long-term debt when assessing the company's solvency, your opinions expressed in the Report and at the Estimates Committee do not take into account all circumstances relevant to an assessment of solvency.

Specifically, whether a company is insolvent is a question of fact taking into account the company's financial position as a whole, which includes consideration of 'commercial realities' such as the nature of the company's assets and liabilities, cash, the money it could realise by sale or on security of its assets and the ability to obtain financial assistance.⁹

Statements you made during the Estimates Committee indicate that you have not taken opportunities to inform yourself as to TT-Line's financial position as a whole, including:

- your statement that you identified 'financial viability challenges' in January 2025. We are instructed that to the current board and senior management's knowledge, your suggested concerns were not communicated to anyone within TT-Line management or the board;¹⁰
- your statement that you met with TT-Line management on 28 May 2025 to discuss 'significant concerns' about the viability of TT-Line's corporate plan. We are instructed this conference was in fact a meet-and-greet with the new CEO (which he initiated) at which, when the CEO offered you an opportunity to raise any concerns as to TT-Line's financial position prior to year-end, no concerns were raised by you;¹¹ and
- your opinion that you are not aware of anything occurring that has made or will make TT-Line solvent again. We are instructed that since completion of your audit on 19 August, you would simply not know what initiatives have been pursued by the company since that time to restructure its financial position. This is unsurprising given that your audit role does not require you to monitor the

⁸ Parliament of Tasmania, Legislative Council Estimates Committee A Transcript, 17 November 2025, page 27.

⁹ *Bentley Smythe Pty Ltd v Anton Fabrications (NSW) Pty Ltd* (2011) 248 FLR 384, [47], citing *Southern Cross Interiors Pty Ltd (in liq) v DCT* (2001) 53 NSWLR 213, [224]-[225]; *Bell Group Ltd (in liq) v Westpac Banking Corporation (No 9)* (2008) 70 ACSR 1, [1087]-[1090].

¹⁰ Parliament of Tasmania, Legislative Council Estimates Committee A Transcript, 17 November 2025, page 106.

¹¹ *Ibid*, page 107.



company during the Relevant Period. However, to reference your comments in the present tense when you are not privy to what the company is currently doing, is simply misconceived.¹²

For the reasons set out above, we consider that your assessment of TT-Line's solvency is misconceived in suggesting that TT-Line was insolvent as at 11 July 2025, 19 August 2025 or is presently so. Whilst being respectful of your role and responsibilities, the commentary you are making about the company is causing real harm to the company and its stakeholders, being its shareholders, employees, suppliers, and customers.

Yours sincerely

Alan Mitchell
Partner
Herbert Smith Freehills Kramer

+61 3 9288 1401
+61 409 003 519
alan.mitchell@hsfkramer.com

Herbert Smith Freehills Kramer LLP and its affiliated and subsidiary businesses and firms, Herbert Smith Freehills Kramer (US) LLP and its affiliate, and Herbert Smith Freehills Kramer, an Australian Partnership, are separate member firms of the international legal practice known as Herbert Smith Freehills Kramer. We practise in Australia through Herbert Smith Freehills Kramer, an Australian Partnership (ABN 98 773 882 646).

¹² Ibid, page 108.