

REGULATORY INTELLIGENCE

New Zealand AML regulator likely to reach 'agreed settlement' with TSB Bank in latest civil claim

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The Reserve Bank of New Zealand is likely to settle its legal claim against TSB Bank for "acknowledged" breaches of the [Anti-Money Laundering and Countering Financing of Terrorism \(AML/CFT\) Act 2009](#), legal experts said. The central bank said the formal enforcement action represented an "escalated regulatory response" to TSB's non-compliance with some fundamental aspects of the regime.

"We are disappointed that TSB did not respond sufficiently to our initial formal warning. We are now obliged to take this High Court procedure," said Geoff Bascand, deputy governor and general manager of financial stability.

"It is not alleged that TSB was involved in money laundering or the financing of terrorism."

Continuing remediation program

TSB said it was "continuing to actively remediate the issues identified by the Reserve Bank" and is providing regular updates to the AML/CFT supervisory agency on its progress. The bank has set aside a provision for a "prospective liability" but a TSB spokesperson said the size of the provision was confidential.

Barrister Gary Hughes, of Akarana Chambers, said the case had been foreshadowed since July 2020 when TSB included a provision in its annual accounts for a potential liability.

"The underlying issues seem to hark back to when the RBNZ issued a formal warning five years ago. I doubt it will have long to run in the court system. If they have already filed an agreed statement of facts with the court they are some way down the path towards settling it," Hughes said.

"In this situation you would expect negotiations are continuing as to what size the ultimate penalty should be. The concluded AML court cases to date have seen a wide range of outcomes, from NZ\$5.3m down to \$356,000, which shows just how much this is a case-specific matter. None of those earlier cases have been against a bank. Several were undefended, and so ended up as a very one-dimensional hearing."

The RBNZ said TSB had "acknowledged liability" in the case. The two parties have also filed an agreed statement of facts with the High Court.

"Unless something goes right off the rails during negotiations, it appears this case will go forward in due course by agreed statement of facts and — more than likely — an agreed penalty for the High Court to confirm."

Formal warning

In 2016 TSB received a formal warning from the central bank for basic breaches of with the AML/CFT Act. The bank lacked effective procedures, policies and controls for monitoring and managing compliance with its AML/CFT program, the RBNZ said. It had failed to review and maintain an AML/CFT program. The bank also failed to conduct a risk assessment in respect of its real estate operations. TSB's risk assessment also overlooked the country risk profile associated with some of the jurisdictions in which it provides services.

"As this matter is now before the High Court, the Reserve Bank will not be making any further comment until the matter is determined," the RBNZ said.

A recent review by the Financial Action Task Force criticised the RBNZ for failing to take appropriate enforcement action in cases of serious non-compliance. In response to the criticism, the RBNZ has been ramping up its financial crime compliance enforcement presence. The AML supervisor for banks is investigating TSB Bank and another institution for failures in their risk assessments and compliance programs. The regulator is also working with eight banks that have filed late transaction reports, amid a heightened enforcement climate on both sides of the Tasman.

The RBNZ has been something of a laggard in enforcement. Out of New Zealand's three AML/CFT supervisors, "the Department of Internal Affairs has far and away been the most active in court proceedings to date," said Hughes, who is an expert in financial crime and misconduct law.

John Kelly, TSB chairman, said in a written statement that the bank acknowledged it needed to address some areas of its AML/CFT compliance.



"A significant program of work has been in place for some time to achieve this. We are committed to cooperating with the Reserve Bank to ensure we make improvements to address these issues, many of which had been self-identified by TSB," Kelly said.

Resolute response needed

Hughes said the case highlighted the need to take resolute action in response to a formal warning from the regulator.

"Once you're in the system with a warning, there won't often be a second warning," he said.

TSB is a community-owned bank headquartered in New Plymouth, in the Taranaki region on the North Island of New Zealand.

[Complaints Procedure](#)

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