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Supreme Court ruling on the Pacific International Commercial Bank vs National Reserve Bank of Tonga's case

The Supreme Court issued its ruling on 5th July 2018 on the application by the Pacific International Commercial Bank for the judicial review of the decision by the National Reserve Bank of Tonga (NRBT) to revoke the bank license of Pacific International Commercial Bank (PICB) on 26th July 2016.

By way of background, after much correspondences and discussions between the NRBT and the PICB, the NRBT Board decided to revoke PICB's license with immediate effect on 26th July 2016. The basis for revoking of PICB's bank license included the following:

- failing to conduct banking business according to the business plan that was submitted in the application process, which had played a significant part in the NRBT's consideration and ultimate approval of PICB's application for its bank license;
- failure to have audited accounts since its inception;
- failure to provide accurate and reliable reports, reports could not be verified in certain respects, particularly in relation to verifying PICB's compliance with the NRBT directives;
- accumulation of net losses since its inception.

PICB's statement of claim was based on six causes of action; one of which was struck out in a ruling by the Supreme Court on 28th July 2017; and the remaining five were dismissed on the ruling on 5th July 2018. The thrust of PICB's claim is that the NRBT had failed to give PICB notice of its intention to revoke PICB's bank license pursuant to the requirements of section 10 of the Financial Institutions Act.

Chief Justice Paulsen accepted that the NRBT had used sections 36 and 37(1) of the Financial Institutions Act for its decision to revoke PICB's bank license. Unlike section 10 where the NRBT has the discretion on whether to exercise its power or not to revoke a bank's license, under section 36 the NRBT has no discretion but is obligated to act should any of the circumstances in section 36 arise by exercising any of the powers on section 37.

The Supreme Court therefore ruled that the PICB's claim is dismissed; that the word "bank" is removed from the name of Pacific International Commercial Bank; and that the legal costs of NRBT are to be fixed by the Registrar if not agreed with PICB on how the costs will be covered.

Chief Justice Paulsen emphasized that this case's ruling "will provide assurance to the public that banking operations are conducted in the Kingdom on a sound financial basis and subject to the proper supervision of the NRBT."

A copy of the Supreme Court ruling can be found on this NRBT website [link](#).

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