

# INSOLVENCY REPORT

Insolvency Report no. 8 by the Administrators of

**DSB Bank N.V.**

29 April 2011

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*The public insolvency reports of DSB Bank N.V. (**DSB Bank**) are published online on the websites [www.dsbbank.nl](http://www.dsbbank.nl) and [www.houthoff.com](http://www.houthoff.com). The administrators of DSB Bank (**Administrators**) will also be using these websites to publish other information concerning the case and the progress of the insolvency proceedings in the future.*

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## **Main points of this report**

### **Principal activities/events to date:**

- The first meeting of creditors was held on Friday, 10 December 2010, in the RAI Centre in Amsterdam. The lists of allowed and rejected claims filed by the Administrators were finalised at the meeting by the supervisory judge, with a few amendments and additions. The meeting was adjourned – pro forma – until 3 February 2011 and subsequently adjourned until 12 May 2011 to allow rejected claims on which agreement is subsequently reached between creditors and the Administrators to be added to the list of allowed claims.
- The supervisory judge has since called a meeting of creditors to be held at 11:30 on Thursday, 19 May 2011, with the sole purpose of allowing late claims.
- Since September 2010, the Administrators have been in discussion with three large stakeholder organisations as well as the representatives of four legal assistance insurers (**Stakeholder Organisations**) with a view to deciding jointly what the basic approaches should be to finding solutions for the problems of the complaints concerning duty of care. The Administrators and Stakeholder Organisations reached agreement in the previous reporting period on a proposal which the Administrators would put before customers with complaints regarding DSB Bank securities lending products (**Hollands Welvaren Select**). The Administrators and the Stakeholder Organisations are continuing joint discussions aimed at finding efficient solutions for existing and former DSB Bank customers with duty-of-care complaints relating to single-premium policies and other products.
- In the present reporting period, the Administrators reported on progress in the DSB Bank insolvency proceedings in a telephone conference with the holders of notes in

the five Special-Purpose Vehicles (SPVs). This conference was organised by the SPVs.

- In March 2011, the Administrators, having obtained the endorsement of the creditors' committee and the approval of the supervisory judge, signed an agreement with the Dutch Tax Administration in Amsterdam to reach an amicable settlement of all the outstanding DSB Group tax issues. As a consequence of this agreement, DSB Beheer B.V. will receive a net amount of approximately €23.5 million in May 2011. This will enable the Administrators to allow an additional claim of at least €20 million in the winding up of DSB Beheer B.V.
- The Administrators have notified the majority of those staff currently still employed by DSB Bank that they will be able to remain in service until at least the mid-2012. A few employees will be leaving in the course of 2011.
- The oral consideration of the case brought by DSB Deposits Association (Vereniging DSB Deposito's (VDD)) against the judge's decision in the Rotterdam District Court on 29 July 2010 was held by the Trade and Industry Appeals Tribunal on 21 April 2011. The Appeals Tribunal hopes to reach a decision by 1 June 2011. VDD is also preparing test cases against the Administrators following the decision by the Administrators not to recognise the subordinated deposit holders as ordinary creditors in the liquidation.
- DSB Bank currently has approximately 147,000 loans to customers outstanding, totalling an amount of approximately €5.9 billion (more than one loan has been granted to the same borrower in several cases). DSB Bank receives approximately €27.9 million per month interest on these loans. Between the date of the bank's collapse and the end of April 2011, DSB Bank received a total of approximately €1.3 billion in interest and loan repayments.
- The Administrators raised a special short-term loan facility originally totalling €1 billion from several Dutch banks. Borrowing under the special short-term loan facility currently stands at €157 million.
- The Complaints Management Department has now had 8,990 complaints submitted to it and 2,712 of these complaints concern notice of an intention to set off a possible duty-of-care claim against an existing loan.
- Under the debt restructuring arrangements which have been in place since May 2010, 883 restructuring requests have been acknowledged by the bank and, of these, 813 customers have received a debt restructuring proposal. By far the majority of the responses so far received have been positive; 734 debt restructuring proposals have been signed and returned.

**Prospects for creditors:**

The Administrators do not envisage that any pay-out will be possible on the subordinated claims. The amount of any pay-out to unsecured creditors depends on the proceeds from the disposal of the assets, the amount of the liabilities and the time and the costs involved in the winding-up operation.

An initial distribution is scheduled for June 2011. The Administrators will seek the recommendations of the creditors' committee concerning their proposal to pay out 100% to creditors with allowed preferential claims and 15% to creditors with allowed unsecured claims. Given the committee's approval, the supervisory judge will then be asked to approve the distribution list. The Administrators are currently unable to make any predictions regarding the overall percentage that can ultimately be paid.

Larger distributions will be possible after the sale of the loan portfolio (or parts thereof).

Details of company	: <b>DSB Bank N.V.</b>
Insolvency case number	: F 09 / 798
Decision dates	: Emergency ruling: 12 October 2009 Declaration of insolvency: 19 October 2009
Administrators	: R.J. Schimmelpenninck and B.F.M. Knüppe
Supervisory judge	: M.L.D. Akkaya (District Court at Alkmaar, Amsterdam branch)
Reporting period	: 1 February 2011 to 29 April 2011

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### **Introductory remarks**

This is the eighth public insolvency report by the Administrators. It covers the period from 1 February 2011 to date (29 April 2011) and contains the financial information relating to the period ending 31 March 2011. It should be read in conjunction with the previously published reports. All the reports can be found on the websites [www.dsbbank.nl](http://www.dsbbank.nl) and [www.houthoff.com](http://www.houthoff.com).

The insolvency of DSB Bank is legally complex. In this report, the Administrators give a simplified account of the current state of affairs in accordance with the generally accepted standards for insolvency reporting in the Netherlands. The Administrators emphasise that the information in this report is subject to closer examination. It may prove necessary to amend the information given at a later stage. It is accordingly not yet possible to make any statement concerning the completeness and accuracy of the information contained in this report.

No rights may be derived from this insolvency report and/or any subsequent reports. Nothing in this report should be interpreted as acknowledging liability or waiving any rights.

An English translation of this eighth report will again be made available (but will not have any official status). Reliance can only be placed on the Dutch text.

In conducting their activities, the Administrators make use of the advisory and other services of Houthoff Buruma Coöperatief U.A. (**Houthoff Buruma**), PricewaterhouseCoopers Advisory N.V. (**PwC**) and Kempen & Co N.V. (**Kempen & Co**) and various other law firms and advisers.

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## 0. General information for creditors of DSB Bank

### 0.1. Information for customers with savings accounts, current accounts or deposit accounts that are not subordinated

As regards the position of customers of DSB Bank with savings accounts, current accounts or deposit accounts whose claims qualified as not subordinated by virtue of the amounts owed to them (**Account Holders**), reference is made to the previous public reports.

#### *Account Holders with claims of less than € 100*

Account Holders' claims of less than €100 per creditor will be paid in full by the Administrators for reasons of efficiency. The amounts concerned have now been paid to the majority of these creditors.

#### *Account Holders with claims of more than € 100*

At the first meeting of creditors held on 10 December 2010, the claims of these Account Holders were considered and were finalised by the supervisory judge. Account Holders with an allowed claim following this meeting accordingly have a right to a share of the proceeds from the liquidation.

#### Subordinated deposit holders

VDD brought an appeal before the Trade and Industry Appeals Tribunal against the judge's decision in the Rotterdam District Court on 29 July 2010 when it was ruled in a number of test cases that subordinated deposits did not qualify for compensation by the Nederlandsche Bank (DNB) under the Deposit Guarantee Scheme (DGS). The oral consideration of the case before the Trade and Industry Appeals Tribunal was held on 21 April 2011. The Appeals Tribunal hopes to reach a decision by 1 June 2011.

VDD has advised the Administrators that it is of the opinion that the claims of the subordinated deposit holders should be allowed as unsecured claims in the liquidation. The Administrators contest this view, maintaining that they are definitely subordinated claims. It has since been agreed that the claims concerned will be efficiently added to the list of allowed claims or to the list of allowed subordinated claims as soon as the matter is clarified.

By way of test cases, two members of VDD have submitted a claim to be allowed as an unsecured claim in the liquidation. Since the Administrators rejected this claim, the supervisory judge referred the cases to be heard before

the civil chamber of the District Court in Amsterdam on 18 May 2011 (see also Section 8.6 of this public report).

0.2. General information for creditors who have not yet filed claims

Creditors who have not yet filed a claim in the liquidation can still do so by submitting their claim in writing to the Administrators, stating the nature of the claim and the amount concerned and supporting it with relevant documentary evidence. Creditors believing they have a claim to a privilege, pledge, mortgage or possessory lien should also make this known.

Claims may be submitted by e-mail to [crediteuren@dsbbank.nl](mailto:crediteuren@dsbbank.nl) or by writing to:

**DSB Bank N.V.**  
**t.a.v. afdeling Crediteurenadministratie**  
**Postbus 70**  
**1687 ZH Wognum**  
**Netherlands**

Information about allowing late claims in the creditors' meeting can be found in Section 8.7 of this public report.

0.3. Complaints or counterclaims from customers with loans

Customers wishing to make a complaint should address their complaints to the Administrators by e-mail to [crediteuren@dsbbank.nl](mailto:crediteuren@dsbbank.nl) or by writing to Curatoren DSB Bank, t.a.v. afdeling Klachtenmanagement, Postbus 70, 1687 ZH Wognum, Netherlands.

Only when agreement has been reached between the Administrators and a DSB Bank customer concerning the amount of a claim (submitted as a complaint) or a claim has been allowed by a judge in an irrevocable court decision can the amount of a claim be set against the amount owed in respect of a loan.

For as long as a claim (or the amount thereof) has not been finalised by an agreement with the Administrators or an irrevocable court decision, the amount of the claim cannot be set against the amount owed in respect of a loan. If it is subsequently found that a customer has paid too much in connection with the liquidation, the Administrators will repay the amount overpaid in the final settlement of the insolvent entity's debts.

#### 0.4. Payment arrangements

The Administrators have in place various arrangements for customers with serious payment problems. See Sections 5.5 to 5.10 of this public report.

## 1. Introduction

### *Principal activities in the recent reporting period*

- 1.1. The insolvent entity's organisation worked intensively in the reporting period on the conclusion of the meeting of creditors. Currently there is an ongoing dialogue with creditors whose claims have been rejected with the object of minimising the number of creditors with whom it becomes necessary to enter into claim validation proceedings. Discussions are also being held with creditors with late claims who have come forward in time for the meeting of creditors to be held on 19 May 2011.
- 1.2. The Administrators continue to liaise with the directors and/or administrators of DSB Beheer B.V. and its subsidiary group companies, including with regard to the effects of the agreement with the Dutch Tax Administration and the current account positions between the entities. Meetings are also held periodically with DSB Leven N.V. (**DSB Life**) and DSB Schade N.V. (**DSB Non-Life**), in which an important topic is the settlement of duty-of-care complaints which may well affect these insurers as well.
- 1.3. There are also regular contacts between the Administrators and holders of pledges and/or other rights to the DSB Bank Loan Portfolio. Meetings are also regularly held with the SPVs. See for further details Section 6.3 of this public report.
- 1.4. The Administrators periodically assess whether it is opportune to proceed with selling the loan portfolio. The Administrators continue to take the view that it is in the interests of DSB Bank creditors to delay the sale of the Dutch part of the portfolio. The Administrators are currently exploring the possibility of selling the much smaller German portfolio.
- 1.5. In the period under review, the Administrators continued with the usual investigations into the causes of the collapse. A start has now been made with the first formal meetings with the various individuals



and organisations concerned. The Administrators refer to Section 7.5 of this public report.

- 1.6. Every two weeks, a plenary meeting is held with the Stakeholder Organisations with a view to deciding what the basic approaches should be to finding solutions for existing and former customers with complaints concerning duty of care. It has been agreed with the Stakeholder Organisations that no announcements will be made on the progress of these discussions.

## **2. Current situation**

### 2.1. Management and organisation

See the first public report. For details of the structure of DSB Group, reference is made to the two organisation charts appended as Annex 1 to the first public report.

### 2.2. Balance sheet total on the date of the collapse

See the first public report, in particular Annex 2.

### 2.3. Statement of assets and liabilities as at 30 September 2010

A statement of assets and liabilities as at 30 September 2010 was appended as Annex 1 to the fifth public report.

### 2.4. Legal proceedings

Those legal proceedings in which DSB Bank is the defendant predating the collapse have been suspended *ipso jure* by virtue of the insolvency. Proceedings in which DSB Life and/or DSB Non-Life are also defendants alongside DSB Bank have been suspended with respect to DSB Bank but continue with respect to DSB Life and/or DSB Non-Life. In three of these proceedings, statements of defence have been made on behalf of DSB Life and/or DSB Non-Life; the next stage is the personal appearance of the parties and consideration of the cases following the statements of defence.

A number of proceedings have also been struck off *ex officio*. These proceedings can be re-instigated at the request of either of the two parties involved.

Cases on which judgement was about to be pronounced when the bank was declared insolvent have not been suspended. No judgement has yet been given in any of these cases since the publication of the previous public report, so that the total number of cases in which DSB Bank is defendant adjudicated since the date of the collapse is still four.

In addition to the proceedings in which DSB Bank is defendant, a large number of cases are currently before various courts in the Netherlands brought by DSB Bank for the recovery of debts. In a number of these debt recovery cases, counterclaims have been submitted by the defendants. These cases are being examined on an *ad hoc* basis to see if they can be brought to a conclusion by means of an amicable settlement.

As far as the cases in which DSB Bank is claimant are concerned, and no counterclaim has been submitted, the desirability of pursuing the claims is being examined on an *ad hoc* basis. Pending the outcome, application has been made and granted for the cases concerned to be halted or suspended. Four cases in which DSB Bank is claimant have been struck off *ex officio*. The cases concerned can be re-instigated at the request of either party.

#### 2.5. Proceedings brought before the courts since the collapse

Since the publication of the previous public report, no new cases have been brought against the Administrators/insolvent entity with the exception of the case instigated by Stichting Hypotheekleed (see Section 5.4 of this public report). As mentioned above, counterclaims against the Administrators/insolvent entity have been made in some of the current cases. These cases, too, are being examined on an *ad hoc* basis to see if they can be brought to a conclusion by means of an amicable settlement.

#### 2.6. Insurance

See also the second public report. Where necessary, existing insurance policies have been cancelled, for example in connection with the disposal of property and other assets.

#### 2.7. Rents

##### *Premises rented from group entities*

The lease on the premises at Atoomweg 23 in Hoorn was cancelled on 28 April 2011. As from that date, DSB Bank rents the following two premises from group entities:

- Protonweg 32, Hoorn;
- Jan Leentvaarlaan 37-47, Rotterdam.

The premises at Richterslaan 2 in Nieuwegein have since been sold and the conveyance has been completed.

*Premises rented from third parties*

See the earlier public reports.

### **3. Staff**

#### 3.1. Number of employees at the time of the collapse

See the second public report.

#### 3.2. Number of years of service prior to the collapse

See the second public report.

#### 3.3. Employees

DSB Bank currently has approximately 258 employees (204.06 full-time equivalents) and 23 staff (18.85 FTEs) employed by DSB Insurance, a wholly-owned subsidiary of DSB Bank. The insolvent entity also uses the services of more than 35 self-employed persons.

To the Administrators' knowledge, almost 1,400 former employees of DSB Group have now found new jobs or become self-employed.

#### 3.4. Provisional continuation of activities

The Administrators have notified the majority of those staff currently still employed by DSB Bank that they will be able to remain in service until at least mid-2012. A few employees will be leaving in the course of 2011. The existing staff retention scheme will be continued on the same basis.

The change in the expected date of termination is based on the progress being made in the winding-up operation and the outcome of talks with external parties regarding the takeover and servicing of the business and on the need to make it clear to staff in good time when the final date of their employment will be.

As work continues in 2011, employees will be given the opportunity of availing themselves of a 'mobility' programme. This has the purpose of retaining staff as far as possible in order to bring the activities to a conclusion but also aims to meet the growing need among employees for training and personal development with a view to their future beyond the conclusion of activities at DSB Bank.

#### 3.5. Works Council and unions

The Works Council is kept regularly informed and/or involved by the Administrators regarding important matters affecting employees. Representatives of the Administrators also maintain contact and have meetings with the unions.

### 3.6. Pensions

The Administrators and the administrator of the DSB Bank group pension scheme, SNS Reaal, have now reached final agreement on the accrual of pension rights of employees still working for DSB Bank. The unions and the Works Council have given their agreement to the arrangements. The documentation has since been prepared and is due to be signed by the various parties.

## 4. **Assets**

### 4.1. General

For a general overview of the assets of DSB Bank at the time when the bank was declared insolvent, see Annex 2 to the first public report. For the current position, see **Annex 1** to the fifth public report. To supplement these statements, the Administrators have the following comments.

### 4.2. Mortgages

DSB Bank's mortgage and other loans are managed by the Banking Processes Department of DSB Bank. Previous reports mentioned customers with loans which include 'construction deposits'. Of the 800 or so 'construction deposit loans', more than 250 have now been repaid.

### 4.3. Registered property

See also the preceding public reports. A substantial proportion of the registered property has since been sold. The Administrators expect the sale of the remaining properties to be completed in the course of 2011. They have, however, temporarily suspended efforts to sell two premises as they are being used to provide temporary accommodation for the organisation.

### 4.4. Other assets

Auction sales are regularly held by Troostwijk Veilingen B.V. to dispose of surplus office furniture and related equipment.

### 4.5. Subsidiaries, associates and joint ventures

For a list of DSB Bank's various subsidiaries, associates and joint ventures, see Annex 1 to the first public report. For financial information relating to these entities, the Administrators make reference to Annex 2 to the first public report. The Administrators have the following specific remarks concerning the individual subsidiaries, associates and joint ventures of DSB Bank.

#### *DSB Verzekeringen B.V.*

This company performs the function of authorised agent for the insurance

policies taken out via DSB Bank, and is functioning normally.

*DSB Beveiliging B.V.*

For information on the insolvency of DSB Beveiliging and the liquidation of this entity, reference is made to the public reports specifically dealing with this insolvency, which can be found on the DSB Bank website ([www.dsbbank.nl](http://www.dsbbank.nl)).

*DSB Leeuwarden B.V.*

For information on the insolvency of DSB Leeuwarden and the liquidation of this entity, reference is made to the public reports specifically dealing with this insolvency, which can be found on the DSB Bank website ([www.dsbbank.nl](http://www.dsbbank.nl)).

*DSB Print B.V.*

For information on the insolvency of DSB Print and the liquidation of this entity, reference is made to the public reports specifically dealing with this insolvency, which can be found on the DSB Bank website ([www.dsbbank.nl](http://www.dsbbank.nl)).

*Inspectrum Groep B.V.*

This company (which is not technically insolvent) was originally established as a vehicle for the demerger of DSB Bank's Collections Department. However, the Administrators know that the transfer of said department to Inspectrum Groep B.V. was never completed. The staff remained employees of DSB Bank, for instance, and there were no separate accounting systems. The Administrators are considering what to do about the situation. See Section 5.11 of this public report concerning the activities of this company.

*Paul.nl B.V.*

See the first public report.

*DSB Belgium N.V.*

See the fifth public report

*DSB Bank N.V. branch in Ljubljana / DSB Posojila d.o.o.*

See the fifth public report. The legal and administrative aspects of the closure of this branch have now been completed. Based on the settlement of the portfolio, which has been taken over locally by the former director, a small amount of income for the insolvent entity can be expected.

*DSB Zweigstelle / DSB Deutschland GmbH / DSB Direct*

See the fifth public report. The Administrators are exploring the possibility of disposing of the German portfolio and activities for a fair price in a controlled

sale process. The necessary interest does exist in the market and the Administrators have received a number of indicative and firm offers. The Administrators are currently negotiating with several of these interested parties to ascertain precise details of the price being offered, the terms and conditions of a proposed deal and the probability of its success. It is expected that it will be possible to provide more information on the outcome of this process in the next insolvency report.

#### 4.6. Domain names

The Administrators are currently making preparations for the sale of the remaining DSB Bank domain names.

### 5. **Debtors / receivables**

#### 5.1. General

For a general overview of the receivables position of DSB Bank, reference is made to Annex 2 to the first public report. An update is provided by the statement of assets and liabilities (as at 30 September 2010 – see **Annex 1** to the fifth public report).

#### 5.2. Settlement of complaints

A total of 8,990 complaints have now been registered with the Complaints Management Department (at the time of the seventh public report: 8,182). Of these complaints, 2,712 concern advance notice of the intention to set off the amount of a possible duty-of-care claim against an outstanding loan (at the time of the seventh public report: 2,709).

The majority of the complaints relate to the alleged dereliction of the duty of care on the part of DSB Bank. A small proportion of the complaints relates to matters not concerned with the duty of care.

Since the commencement of the insolvency proceedings, a total of 347 complaints have been settled. This number excludes the 734 customers that have accepted a debt restructuring proposal.

#### 5.3. Analysis of duty-of-care issues

At the instigation of the Administrators, an analysis was made of the alleged duty-of-care issues involving DSB Bank. The results of this analysis were summarised in the sixth public report and are being updated as things change.

#### 5.4. Response to complaints / liaison with Stakeholder Organisations

The Administrators are busy formulating a set of principles for the settlement of complaints relating to duty of care. This involves close contact on the part of the

Administrators with the individual customers, with their legal representatives and with a number of Stakeholder Organisations.

The Administrators hold frequent confidential meetings with the Stakeholder Organisations to discuss the issues surrounding duty of care. The aim of these discussions is to decide what the basic approaches should be to finding efficient solutions for existing and former DSB Bank customers with complaints concerning duty of care. The following Stakeholder Organisations are involved in these talks:

- Stichting Hypotheekleed;
- Stichting Steunfonds Probleemhypotheeken;
- Stichting Platform Aandelen Lease; and
- four individual legal assistance insurers, viz. Stichting Achmea Rechtsbijstand, Stichting Univé Rechtshulp, Stichting Schaderegelingskantoor voor Rechtsbijstandverzekering and DAS Nederlandse Rechtsbijstand Verzekeringsmaatschappij N.V.

The discussions with the Stakeholder Organisations focus on the general approaches to the solutions applicable to certain categories of customers who have filed complaints. Once these general approaches have been decided, they will apply not only to the customers represented by one or more of the above organisations but to all customers who have filed similar complaints. The discussions with the Stakeholder Organisations have intensified in recent months. It has been agreed with the Stakeholder Organisations that no announcements will be made on the progress of these discussions. However, a partial solution has since been reached with the Stakeholder Organisations regarding Hollands Welvaren Select complaints (see Section 5.5 of this report). Details have been published on the website. The partial solution is currently being implemented.

Separately from these discussions, Stichting Hypotheekleed has filed a claim against the Administrators pursuant to the provisions of Section 3:305a of the Netherlands Civil Code, concerning the payment of out-of-court costs.

The discussions with the Stakeholder Organisations regarding the general approaches to be adopted do not mean that the Administrators will not also continue to liaise with the individual organisations on the resolution of complaints from individual customers who have mandated that particular organisation to act on their behalf.

#### 5.5. Securities lending portfolio (Hollands Welvaren Select)

On 9 December 2010, the Administrators and Stakeholder Organisations reached agreement on a proposal which the Administrators would put before customers with complaints regarding Hollands Welvaren Select. See [www.dsbbank.nl](http://www.dsbbank.nl). The same website also has a HWS FAQ section containing more information on the details of the proposals to be made by the Administrators. By far the majority of the customers able to take advantage of the scheme have since received a proposal. The response from customers has been positive almost without exception.

#### 5.6. Set-off

As in the preceding reporting period, a number of customers have invoked the right of set-off. Under the general terms and conditions of DSB Bank, customers do not have a right to set off an amount receivable from DSB Bank against the amount they owe to DSB Bank. The Administrators have nevertheless previously agreed that, in those cases where it can be established that a customer's losses are due to dereliction of the duty of care vis-à-vis that customer, whether as a result of a court ruling or an out-of-court settlement, the consequent loss may be set against the existing amount of that customer's indebtedness to DSB Bank.

#### 5.7. New complaints

Customers wishing to file a complaint should address their complaints to the Administrators by e-mailing [curatoren@dsbbank.nl](mailto:curatoren@dsbbank.nl) or writing to Curatoren DSB Bank, t.a.v. afdeling Klachtenmanagement, Postbus 70, 1687 ZH Wognum, Netherlands.

#### 5.8. Residual debt arrangements

The residual debt arrangements concern the outstanding debt which remains after a home has been sold and the proceeds have been used to pay off the mortgage. The scheme applies to customers who have recently sold their home and to customers with an existing residual debt. The basis of the scheme is that customers should repay their residual debt at a rate matching their ability to pay and should be debt free after a repayment period of not more than 50 months. Customers with no ability to make repayments will be allowed a period of grace of 12 months, after which their position will be reassessed.

#### 5.9. Debt restructuring arrangements

Customers who were already seriously overindebted when they took out a loan and are now unable to meet their payments are able to apply for restructuring of their debts. The waiver of part of the principal does not have any basis in law but reflects sound credit management practice. The debt restructuring proposal is a one-off proposal which is not negotiable.



To date, 1,807 debt restructuring applications have been assessed, of which 53.9% have been rejected. A total of 813 customers have so far received a debt restructuring proposal. A typical reason for rejection is that the monthly payments should be affordable, based on the standards applied by NIBUD (National Institute for Family Finance Information). Restructuring applications are also rejected where a customer has so much debt that, even with the maximum easing of the debt burden by DSB Bank, the monthly payments would remain unaffordable.

#### 5.10. Temporary payment arrangements

Customers facing acute financial problems can apply to the Administrators for temporary payment arrangements to be made. Customers wishing to qualify for temporary payment arrangements are required to submit a standard list of their income and expenditure, which can be found on the website [www.dsbbank.nl](http://www.dsbbank.nl). If warranted by a particular customer's income situation, the customer will be offered a temporary reduction in the monthly payments.

#### 5.11. Payment collection

Even customers with a complaint are required to continue paying. Applications to set off debts will not be entertained by the Administrators. If a customer falls into arrears, this fact will be reported to the central credit records agency in the Netherlands (BKR). Allowing the unpaid amount of a loan to increase owing to payment arrears (regardless of whether there are debts to be set off) is extremely prejudicial to the debt position/credit rating of customers. Customers are therefore urged to continue paying the monthly instalments until their complaints have been decided. Various arrangements are in place for clients with serious payment problems (see Sections 5.8, 5.9 and 5.10 of this public report).

## 6. **Bank finances / collateral security held**

### 6.1. Financial statements

**Annex 1** to this public report contains a financial summary of the income and expenditure of the insolvent DSB Bank from the date of the collapse up to the end of March 2011.

**Annex 2** to this public report contains a financial summary of the income and expenditure of the insolvent DSB Bank during the first quarter of 2011.

### 6.2. Credit facilities

For a summary of the credit facilities and the associated collateral security provided, reference is made to Annex 2 to the first public report.

Borrowing under the special short-term loan facility currently stands at €157 million (seventh report: €325 million). The special short-term loan facility can also be used to make interim distributions to the allowed unsecured creditors. The Administrators are currently in negotiations with the banks regarding several changes to the special short-term loan facility.

### 6.3. Securitisation programmes

As in the preceding reporting periods, in the period under review, DSB Bank again looked after the day-to-day management of the portfolios transferred (or pledged) in connection with the bank's securitisation programmes. These servicing activities by the insolvent entity are performed for a fee.

The Administrators' exploration of the possibilities for a strategic alliance of the servicing organisation of DSB Bank with a reputable third-party has reached an advanced stage.

In the sixth public report, it was stated that meetings of noteholders were held on 18 November 2010. In the seventh public report, it was stated that the noteholders' meetings scheduled for 17 January 2011 had been postponed until further notice, essentially because there was currently insufficient information available concerning the impact of the duty-of-care complaints on the securitisation programmes. During the recent reporting period, however, the Administrators held talks with the SPVs and briefed the noteholders accordingly in a conference call meeting organised by the SPVs.

### 6.4. Lease contracts

The Administrators note that DSB Bank is still party to approximately 51 lease contracts relating to company cars in use by DSB Bank and DSB Group staff. The related costs are passed on to the appropriate companies / insolvent entities, as applicable.

### 6.5. Description of collateral security furnished

The validity of the collateral security furnished by DSB Bank is still under investigation and the Administrators reserve all rights in that regard.

### 6.6. Retention of title, rights of recovery and possessory liens

To date, no parties that have come forward claiming retention of title, rights of recovery or possessory liens. The Administrators are therefore assuming that no such rights exist in this insolvency.

### 6.7. Hedges

In the second public report, it was mentioned that all counterparties to interest rate swaps in which DSB Bank was a party (including the back swaps in the securitisation programmes) invoked the right to cancel the contracts prematurely following the declaration of insolvency, as a consequence of which all swaps to which DSB Bank was party were cancelled. All (eight) counterparties have submitted computations of the compensation payments resulting from the premature cancellation of the swaps. The investigation into the correctness of the cancellation payments demanded by the swap counterparties has not yet been completed. On the basis of their own computations, five counterparties have net cancellation payments to make to DSB Bank (in all these cases, the liability has already been set against receivables of the counterparties concerned) while three counterparties are claiming net cancellation payments from DSB Bank. The latter three counterparties have submitted their claims for validation but the Administrators are contesting them. In the period under review, the Administrators reached agreement with one of the three aforementioned counterparties as a consequence of which the claim by the counterparty concerned is no longer contested.

### 6.8. Interest rate policy

The policy adopted by the Administrators for setting floating and fixed interest rates has been posted on the website [www.dsbbank.nl](http://www.dsbbank.nl) since 1 October 2010. Under this policy, the interest rate on approximately half the loans at floating rates was revised downwards. For those customers with loans bearing a lower floating rate than the rate applicable with effect from 1 October 2010, the rate has been increased with effect from 1 January 2011 up to a maximum of 1.1%. In connection with the increase in market interest rates in the first quarter of 2011, the floating rate charged by DSB Bank to its customers with effect from 1 April 2011 has been increased by 0.1 percentage points.

## 7. **Lawfulness**

### 7.1. Duty to keep proper accounts

The Administrators' initial impression was that the accounting records of DSB Bank provided the view of the assets and liabilities of DSB Bank required by law.

In the second half of 2010, it became apparent to the Administrators that, in a number of cases, the loan documentation was not available, at least not in a readily accessible manner. Following an investigation ordered by the Administrators into the quality of the accounting and record-keeping systems, it

was decided to call in professional assistance to implement the necessary improvements.

7.2. Filing of financial statements

See the first public report.

7.3. Unqualified auditors' report

See the first public report.

7.4. Commitment to make payments on shares

See the first public report.

7.5. Improper management

In the period under review, the Administrators continued their investigations into the causes of the collapse. The Administrators have agreed an investigation protocol with nearly all the parties concerned, setting out, among other things, the framework for the formal discussions and exchange of information between the Administrators and these parties. Meetings are still being held with the members of the DSB Bank Executive Board, as most recently in office. In the coming reporting period, the Administrators aim to continue discussions with the parties concerned covering general and specific matters relating to the collapse of the bank (and the background to it). The Administrators are currently engaged in recording the facts to serve as the basis for these formal and informal meetings from the parties concerned who have not yet been interviewed. Partly because of pressures of engagements, the Administrators have been forced to abandon the aim of completing the investigation into the causes of the collapse by June 2011. The Administrators expect to be able to report in September 2011. Only when an analysis of the findings of this investigation has been made will the Administrators draw conclusions regarding the possible accountability of the existing and former executive/supervisory directors of DSB Bank and/or third parties.

7.6. Fraudulent action in respect of creditors

This is the subject of further investigation.

7.7. Activities

In the period under review, internal investigations were made into the accounting systems and the loan documentation and the Administrators continued the usual investigations into the causes of the collapse.

## **8. Creditors / payables**

### 8.1. Creditors' Committee

The definitive creditors' committee is made up of Chapel 2003-I B.V., ING Bank N.V. and Mr E. Hulshof. In the period under review, two full meetings of the Administrators and the creditors' committee were held. At these meetings, the developments surrounding the settlement of the liquidation were discussed and formal requests for advice were made relating to proposed decisions.

### 8.2. Allowed claims

As also reported in the minutes of the first meeting of creditors held on 10 December 2010, 8,130 claims (from 7,403 creditors) representing a total amount of €2,349,177,627 have been allowed as unsecured claims. See also the seventh public report. The Administrators draw attention to the fact that the amount of allowed claims may rise further as a result of decisions in legal proceedings plus late claims.

As also reported in the minutes of the first meeting of creditors held on 10 December 2010, 119 claims (from 49 creditors, including the official body implementing employee insurance schemes UWV) representing a total amount of €719,933.31 have been allowed as preferential claims.

### 8.3. Rejected claims as at 10 December 2010

During the first meeting of creditors on 10 December 2010, the Administrators rejected a total of 269 claims filed by 172 creditors (11 of these as a formality). They represent a total amount of €1,430,610,853. See also the seventh public report. The Administrators are making efforts to reach agreement with as many creditors as possible with rejected claims before the start of the next meeting of creditors. See also Section 8.6 of this report.

### 8.4. Payables of the insolvent entity

Taking into account the position of the insolvent entity, the Administrators will shortly be paying the entity's payables which they have agreed.

### 8.5. Resumption of the meeting of creditors

The supervisory judge adjourned the creditors' meeting held on 10 December 2010 until 3 February 2011 (for some creditors) and subsequently until 12 May 2011, the latter meeting, too, being convened only on a 'pro forma' basis, meaning that the meeting does not qualify as a proper meeting of creditors. The purpose of the meeting is merely to allow rejected claims on which agreement is subsequently reached between creditors and the Administrators to be added to the list of allowed claims. It is the Administrators' intention to publish details of

the claims concerned on the website <http://verificatie.dsbbank.nl> before 12 May 2011. The creditors' meeting will be concluded on 12 May 2011.

Minutes of this pro forma meeting will be taken and will also be published on the above website.

#### 8.6. Remaining contested claims on 12 May 2011

The Administrators expect that, of the 172 creditors whose claims were rejected or contested on 10 December 2010, about half will ultimately reach agreement on the amount of their claims. It will then be possible to add these claims to the list of allowed claims during the meeting to be held on 12 May 2011. In case no agreement can be reached, a claim validation proceeding will be determined.

The Administrators make particular mention of the claim validation proceedings between Stichting Hypotheekleed and Stichting Centralebankclaim on the one hand and DNB on the other. The case concerns a claim from DNB relating to the DGS totalling in excess of €3.5 billion. An amount of €1.3 billion of this claim is contested by the above two organisations. The Administrators do not see any reason to contest the claim. The case has now reached the stage where both the complaint and the statement of defence have been heard. It is possible that the personal appearance of the parties in an attempt to reach a settlement may take place shortly.

#### 8.7. First meeting of creditors pursuant to Section 178 of the Insolvency Act

The supervisory judge has since called a meeting of creditors to be held at 11:30 on Thursday, 19 May 2011, with the purpose of allowing late claims. The emphasis will be on late claims and claims resulting from complaints relating to DSB Bank's HWS product which have now been resolved, following the agreement which has been reached with the Stakeholder Organisations (see Section 5.5 of this report).

As required by the provisions of Section 178 of the Insolvency Act, the Administrators will give notice of the meeting in a letter sent to all creditors at least 10 days in advance. It is the Administrators' intention to make the lists of late, provisionally allowed claims and the lists of late claims rejected by the Administrators available for inspection at the individual court registries free of charge for a period of seven days prior to 19 May 2011. The lists will also be published on the website <http://verificatie.dsbbank.nl>.

8.8. Subsequent meetings of creditors pursuant to Section 178 of the Insolvency Act

The supervisory judge advised the Administrators in the preceding reporting period that one or more separate creditors' meetings as provided by Section 178 of the Insolvency Act (FW) would be convened if desirable in view of the need at a later stage to allow the claims of customers with claims relating to duty of care and creditors with subordinated claims (see **Annex 4** to the fifth public report). Such creditors' meetings will also be held if the settlement of claims filed by the SPVs and certain insurance companies makes it desirable to do so (see **Annex 1** to the sixth public report).

At these subsequent meetings of creditors, it will also be possible to consider other claims not dealt with during the creditors' meeting held on 10 December 2010 or the creditors' meeting to be held on 19 May 2011 for whatever reason, such as late claims and claims from pledgees whose pledges are found not to cover the full amount of their claim.

**9. Miscellaneous**

9.1. Tax matters

DSB Bank is part of the DSB Beheer tax group for corporation tax and is also part of the VAT tax group comprising DSB Beheer BV and DSB Bank NV and related enterprises. The existence of the corporation tax group means that DSB Beheer, as primary tax payer, is liable for any tax owed and benefits from any tax income relating to corporation tax and that the Dutch Tax Administration has greater scope for setting tax assets of the various companies in the tax group against outstanding tax liabilities. Since DSB Bank forms part of the VAT tax group, it is liable for the VAT payable by all the companies in the tax group.

In previous public reports, mention has already been made of the negotiations with the Dutch Tax Administration in Amsterdam on a number of existing tax issues. In this context, the Administrators are now able to report that, in March 2011 – having obtained the endorsement of the creditors' committee and the approval of the supervisory judge – an agreement was signed with the Dutch Tax Administration in Amsterdam to reach an amicable settlement of all the outstanding DSB Group tax issues, without compromising the different views of the parties concerned. As a consequence of this agreement, DSB Beheer (as parent company of the tax group for corporation tax purposes and as part of the VAT tax group) will receive a net amount of approximately €23.5 million (including interest) in May 2011, to be paid into the insolvency account. The

above figure includes the settlement of outstanding tax liabilities concerned with normal operations of the various DSB companies (as at the end of March 2011), representing a net amount of approximately €1.5 million.

As a consequence of the tax settlement agreement, the Administrators expect to be able to allow an additional claim of at least €20 million in the winding up of DSB Beheer, in that the refund of approximately €23.5 million to DSB Beheer largely relates to the activities of DSB Bank (or its former subsidiaries).

Finally, the Administrators and the Dutch Tax Administration in Amsterdam have expressed the intention of holding periodical meetings with a view to ensuring the correct settlement of tax in relation to the winding-up of DSB Beheer and DSB Bank.

#### 9.2. Netherlands Authority for the Financial Markets (AFM)

The Administrators hold meetings with the AFM to discuss current issues on a quarterly basis.

#### 9.3. Provision of information

DSB Bank customers are notified in writing regarding relevant decisions by the Administrators or actions which they should take. The Administrators also provide information on the website [www.dsbbank.nl](http://www.dsbbank.nl) and customers can request information by e-mailing [curatoren@dsbbank.nl](mailto:curatoren@dsbbank.nl). Customers can also telephone the DSB Bank call centre on +31 (0)88 372 30 00. Lines are open on business days from 09:00 to 17:00.

#### 9.4. Activities and time spent

The Administrators have engaged various parties to provide support with the liquidation process, including Houthoff Buruma (legal and tax consultancy), PwC (accountancy, tax consultancy and IT related services) and Kempen & Co (professional services in connection with the sale of the Loan Portfolio). The services of various other outside specialists have also been used.

The Administrators along with the legal and tax consultants of Houthoff Buruma have together devoted 4,441.8 hours in the period 1 January 2011 to 31 March 2011 on the liquidation of DSB Bank. During the same period, PwC spent 455.4 hours on the liquidation of DSB Bank.

#### 9.5. Timetable for the settlement of the liquidation

The Administrators expect to still be engaged in intensive activity connected with the winding-up operation for the entire duration of 2011 and 2012. Residual



activities beyond 2012 are bound to take several more years, albeit becoming less intensive.

9.6. Plan of approach

The Administrators and the organisation of the insolvent entity will continue to work methodically on the settlement of the insolvency. The Administrators will also be concentrating on the continuation and servicing of the loan portfolio, the ongoing recording and validation of creditors and the liquidation of the assets. In addition, the Administrators will be continuing the dialogue with the Stakeholder Organisations regarding the general direction of the resolution of the complaints.

9.7. Filing of the next report

Expected at the end of July 2011.

Wognum, 29 April 2011

R.J. Schimmelpenninck

Administrator

B.F.M. Knüppe

Administrator

**Annexes:**

- Annex 1:** Summary of the income and expenditure of the insolvent DSB Bank from the date of the collapse up to the end of March 2011.
- Annex 2:** Summary of the income and expenditure of the insolvent DSB Bank in the first quarter of 2011.
- Annex 3:** Admissibility of the appeal from the order of the delegated Judge dated April 19th 2011. Available in Dutch only.