

# INSOLVENCY REPORT

Insolvency Report no. 7 by the Administrators of

**DSB Bank N.V.**

28 January 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.
- At the meeting, the supervisory judge consulted the creditors on the appointment of a definitively constituted creditors' committee. The supervisory judge then appointed a definitive creditors' committee, with Chapel 2003-I B.V., ING Bank N.V. and Mr E. Hulshof as its members. The definitive creditors' committee replaces the provisional creditors' committee (members: Chapel 2003-I B.V., ING Bank N.V. Société Générale S.A.).
- For reasons of efficiency, the Administrators took the decision, with the consent of the supervisory judge and the creditors' committee (as provisionally constituted), to pay in full the unsubordinated claims of creditors of less than €100 per creditor. The amounts concerned have since been paid out to the majority of these creditors by crediting the corresponding accounts with DSB Bank.
- 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 announced (in a press release) on 9 December 2010 that they had reached agreement 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 a judgement given on 3 December 2010, the District Court in Amsterdam rejected a petition from the Association of Clients of Financial Institutions (VCFI) for the dismissal of the Administrators. The judgement of the Court has been published on [www.rechtspraak.nl](http://www.rechtspraak.nl).
- On 18 November 2010, informal meetings of noteholders were held at which the Administrators reported on progress in the DSB Bank insolvency proceedings. Approximately 80% of the holders of notes in the five Special-Purpose Vehicles (SPVs) were represented. The formal noteholders' meetings have been postponed indefinitely.
- The DSB Deposits Association (Vereniging DSB Deposito's (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). DNB submitted its written defence in the appeal on 17 December 2010. The oral consideration of the case before the Trade and Industry Appeals Tribunal has been set for 21 April 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 150,000 loans to customers outstanding, totalling an amount of approximately €6.1 billion (more than one loan has been granted to the same borrower in several cases). DSB Bank receives approximately €28.8 million per month interest on these loans. Between the date of the bank's collapse and the end of December 2010, DSB Bank received a total of approximately €1.1 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 €325 million.
- The Complaints Management Department has now had 8,182 complaints submitted to it and 2,709 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, 782 restructuring requests have been acknowledged by the bank and, of these, 730 customers have received a debt restructuring proposal. By far the majority of the responses so far received have been positive; 576 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 the end of the second quarter of 2011. What percentage can be paid out at that date will depend among other things on the amount of the allowed and rejected claims on DSB Bank. The initial pay-out rate will be not more than a few per cent. 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	: 30 October 2010 to 28 January 2011

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### **Introductory remarks**

This is the seventh public insolvency report by the Administrators. It covers the period from 30 October 2010 to date (28 January 2011) and contains the financial information relating to the period ending 31 December 2010. 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 possible to make any statement yet 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 seventh 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

On 22 March 2010, the Deposit Guarantee Scheme (**DGS**) relating to DSB Bank was closed by De Nederlandsche Bank N.V. (**DNB**). As at 29 April 2010, under the DGS, DNB had made over 283,000 payments totalling approximately €3.5 billion to 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**).

In October 2010, the Administrators wrote to the Account Holders with details of the balances on their accounts after processing of the account movements referred to below. In their letter, the Administrators also gave details of the way in which the remaining credit balances would be settled in the liquidation.

To calculate the total credit balances, the Administrators took the credit balances on the accounts at the time of the emergency court ruling. The following amounts were then deducted from these balances, as applicable in the case of each Account Holder:

- Any cash withdrawals / debit card transactions made by the Account Holder after the collapse of the bank up to the maximum permitted amount of €750;
- Compensation of up to €3,000 that may have been paid to the Account Holder under the ‘arrangement for advances’ under the DGS, which was in force between 21 October and 4 November 2009; and
- Any ordinary compensation paid to the Account Holder in connection with the DGS.

The Administrators then added the accrued interest for the period 12-19 October 2009 to the balances remaining after the above account movements.

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

Account Holders’ claims of less than €100 per creditor after the above movements have been paid in full by the Administrators for reasons of efficiency. The amounts concerned have now been paid to the majority of these creditors by crediting their corresponding account.

*Account Holders with claims of more than €100*

Account Holders' unsecured claims amounting to more than €100 per creditor have been included by the Administrators in the list of provisionally allowed creditors.

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. At this stage, the Administrators are unable to make any predictions regarding the percentage that it will ultimately be possible to pay out.

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 DGS. In its appeal, VDD advanced a new argument, viz. that the procedures followed by DSB Bank in accepting the deposits were not in accordance with the provisions of Section 4:28 of the Financial Supervision Act (WFT). DNB submitted its written defence in the appeal on 17 December 2010. The oral consideration of the case before the Trade and Industry Appeals Tribunal has been set for 21 April 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. In order for the subordinated deposit holders to avoid immediately having to pay the costs of a lawyer and court registry fees, the Administrators and VDD suggested that holders of subordinated deposits should consider not making submissions for their claims to be allowed at the meeting of creditors held on 10 December 2010. The deposit holders have not lost any rights by not submitting their claims. If the matter becomes clear in due course, the claims can still be added to the list of allowed unsecured creditors or to the list of allowed subordinated creditors, as applicable, in an efficient manner (see Section 8.7, under 2, of this Report).

By way of a test case, one of the VDD members submitted a claim to be allowed as an unsecured claim in the liquidation. When the Administrators rejected this claim, the supervisory judge referred the case to be heard before the civil chamber of the District Court in Amsterdam on 18 May 2011.

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

Creditors believing 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**

0.3. Creditors' meeting

The creditors' meeting (first part) was held on Friday, 10 December 2010, in the RAI Centre in Amsterdam.

The lists of allowed and rejected claims deposited by the Administrators were finalised by the supervisory judge at the meeting, after various changes and additions. Consideration of the rejected claims was referred by the judge to be heard before the civil chamber of the District Court in Amsterdam on 18 May 2011. A few claims were referred – with the agreement of the creditors concerned – to be heard on Wednesday, 16 February 2011.

The meeting of creditors (on a pro forma basis at this stage) was adjourned until 9:15 on 3 February 2011 and will subsequently be adjourned (likewise on a pro forma basis at this stage) until 9:15 on 12 May 2011. It will then be possible to add rejected claims on which agreement is subsequently reached between creditors and the Administrators to the list of allowed claims. It is the Administrators' intention to publish details of the claims concerned on the website [www.dsbbank.nl](http://www.dsbbank.nl), well in advance of these dates. It will also be possible for late claims to be considered at these meetings, provided they are submitted to the Administrators in good time.

The supervisory judge has advised the Administrators that, as provided by Section 178 of the Insolvency Act (FW), creditors' meetings can always be called if that is desirable in view of the need at a later stage to proceed to allow the claims of existing and former customers with complaints and holders of deposits (see Section 8.7 of this report). The Administrators draw attention to the fact that

creditors submitting late claims can seek to have their claims allowed by filing an objection to a distribution list pursuant to the provisions of Section 186 of the FW.

0.4. Complaints or counterclaims from customers with loans

Customers of DSB Bank who have been granted a loan can submit claims and possible counterclaims against DSB Bank by e-mail to [klachtenmanagement@dsbbank.nl](mailto:klachtenmanagement@dsbbank.nl) or by writing to:

**DSB Bank N.V.**  
**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.

0.5. Payment arrangements

The Administrators have in place various arrangements for customers with serious payment problems. See Sections 5.5 to 5.7 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 preparations for the first 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.

- 1.2. In view of the considerable extent of mutual involvement, there continues to be close liaison with the directors and/or administrators of DSB Beheer B.V. and its subsidiary group companies (**DSB Group**). This includes, for example, regular meetings 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. This dialogue has resulted in the convening of meetings of persons/entities holding notes in the SPVs. This is explained by the Administrators in greater detail in Section 6.3 of this public report.
- 1.4. The Administrators have re-examined the decision to delay selling the Loan Portfolios but have come to the conclusion that it is still in the interests of DSB Bank's creditors to delay selling the Dutch portion of the portfolio. The Administrators will continue to evaluate the situation at regular intervals, revisiting it again in April 2011. 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. The first formal meetings with former executive and supervisory directors of DSB Bank, involving DNB, AFM and Ernst & Young (DSB Bank's auditors at the time), will commence shortly. 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 all existing and former customers with complaints concerning duty of care. The Administrators and the Stakeholder Organisations announced on 9 December 2010 (in a press release) that they had reached agreement on a proposal to be made by the Administrators to customers with complaints regarding the DSB Bank securities lending products (Hollands Welvaren Select). See also Section 5.9 of this public report. It has otherwise 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 have been suspended *ipso jure* as from the date of the collapse. 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 one of these proceedings, a statement of defence was made on behalf of DSB Life on 5 January 2011. Statements of defence are also due shortly to be made on behalf of DSB Life and DSB Non-Life in two other proceedings.

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 been given in any of these cases since the publication of the previous public report, so that the total number of cases adjudicated since the date of the collapse is still four.

In addition to the proceedings in which DSB Bank is defendant, there are currently around another 160 cases before various courts in the Netherlands brought by DSB Bank for the recovery of debts. Four similar cases are pending in Aruba and Curaçao. In three of these cases, judgement has been passed against the defendants *in absentia*. Judgement was passed on the final case on 12 January 2011, with the defendant ordered to pay DSB Bank.

As far as the other cases are concerned in which DSB Bank is claimant, the desirability of pursuing the claims is being examined on an *ad hoc* basis. Pending a definitive decision, application has been made and granted for the cases concerned to be halted or suspended. Three cases in which DSB Bank is

claimant have now 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.

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*

DSB Bank currently still rents seven premises from group entities, itemised in Section 2.7 under (ii) in the second public report. The lease on the premises at Kerkstraat 79 in Wognum also referred to in that section has since been cancelled. The Administrators are currently waiting for the formal transfer document to be signed.

*Premises rented from third parties*

All leases have been cancelled (see the third public report). In the case of one of these premises (Apeldoorn), the Administrators are still waiting for the formal transfer document to be signed by the lessor.

### **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 264 employees (207.99 full-time equivalents) and 23 staff (19.35 FTEs) employed by DSB Insurance, a wholly-owned subsidiary of DSB Bank. The insolvent entity also uses the services of more than 33 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 will be able to remain in service until at least the end of 2011. A few employees will be leaving in the course of 2011. The existing staff retention scheme will be continued on the same basis.

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.

### 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 200 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 first half 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.

##### *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

*DSB Zweigstelle / DSB Deutschland GmbH / DSB Direct*

See the fifth public report

#### 4.6. Domain names

The labels Becam, Frisia and Postkrediet together with the associated domain names have been transferred to third parties. In the current reporting period, the Administrators will be attempting to arrive at a sales protocol for 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 8,182 complaints have now been registered with the Complaints Management Department (fifth public report: 7,825). Of these complaints, 2,709 concern advance notice of the intention to set off the amount of a possible duty-of-care claim against an outstanding loan (fifth public report: 2,672).

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 287 complaints have been settled. This number excludes the 299 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.

Every two weeks, the Administrators hold a joint meeting with the Stakeholder Organisations, involving intensive and confidential discussions of the issues surrounding duty of care. The aim 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 Verzekeringmaatschappij 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. 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 5.8 of this report). Details have been published on the website. The partial solution is currently being implemented.

The discussions 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. Residual debt arrangements

Following a pilot in the autumn of 2010 to evaluate what affect the arrangements would have, implementation of the residual debt arrangements will commence shortly. This concerns the outstanding debt which remains after a home has been sold and the proceeds have been used to pay off the mortgage. Customers with an existing residual debt – and who are not covered by WSNP or MSNP schemes – will be asked to submit details of their income and expenditure so that a new proposal can be made which is affordable. The residual debts will be dealt with in stages. For all customers, repayments made since the declaration of insolvency will be deducted from the amount owed under the new arrangements, so that it will not make any difference precisely when a particular residual debt is reviewed.

#### 5.6. Debt restructuring arrangements

Since May 2010, the Administrators have been actively restructuring the debts of customers who were already seriously overindebted when they took out a loan and are now unable to meet their payments. Under the arrangements, an offer is made to customers of writing off part of the principal so that the monthly payments become affordable after restructuring. In accepting such a proposal, a customer waives any further right to a claim against DSB Bank. The waiver of part of the principal does not have any basis in law but reflects sound credit management practice. The Administrators' reason for adopting the restructuring arrangements was, after all, to improve the affordability of the outstanding loans and to offer a way forward to customers with a debt position from which they otherwise have no prospect of escape. Experience has shown that, for customers in this category, a scheme with a strictly legal basis would not adequately address the payment problems they face. The debt restructuring proposal is a one-off proposal which is not negotiable. In the case of customers who reject this proposal but nevertheless have a valid complaint, the Administrators may in due course propose a solution to the complaint which has a legal framework.

Since the debt restructuring scheme was introduced in May 2010, 782 debt restructuring requests have been acknowledged internally, of which 730 customers have now received a debt restructuring proposal. By far the majority of the responses received so far has been positive, with 576 debt restructuring proposals already accepted, signed and returned.

#### 5.7. 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 must be able to show on the basis of a declaration of their income and expenditure that they are clearly not in a position to make their monthly payments. The list of income and expenditure items to be declared, which is based on a list partly based on the standards applied by NIBUD (National Institute for Family Finance Information), can be found on [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.

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

The Administrators and Stakeholder Organisations announced in a press release on 9 December 2010 that they had reached agreement on a proposal which the Administrators would put before customers with complaints regarding DSB Bank securities lending products (Hollands Welvaren Select). This press release can be found on [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.

#### 5.9. 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 amount of that customer's indebtedness to DSB Bank.

#### 5.10. 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.

#### 5.11. Payment collection

The payment performance of customers – including clients with customers of their own – presents a stable picture. Payment arrears have risen slightly but follow the general trend in 2010 of a slight retrograde step in the payment performance of customers. Inspectrum is actively involved in identifying customers with no prospect of clearing their debts so that the cases concerned

can be referred to the debt restructuring scheme rather than being treated in the normal debt collection process. Payments taken from a person's pay at source follow the new policy, with a maximum limit of 130% being put on the increase in the monthly instalments to clear the arrears. When the arrears have been cleared, the amount of the payroll deductions is reduced to that of the contractual monthly payments. No charges are made for payroll deductions.

## **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 December 2010.

**Annex 2** to this public report contains a financial summary of the income and expenditure of the insolvent DSB Bank during the fourth quarter of 2010.

### **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 €325 million (sixth report: €387 million). The special short-term loan facility can also be used to make interim distributions to the allowed unsecured creditors.

### **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 a concluding stage.

In the sixth public report, it was stated that informal meetings of noteholders were held on 18 November 2010, with formal noteholders' meetings scheduled for 17 January 2011. Because there is currently insufficient information available concerning the impact of the duty-of-care complaints on the securitisation programmes, the noteholders (or their representatives) in consultation with the securitisation companies and the Administrators, decided to postpone the formal noteholders' meetings.

The investigation into the correctness of the cancellation payments demanded by the swap counterparties in the programmes Chapel 2003, Chapel 2007, Dome 2006, Monastery 2004, Monastery 2006 and Convent 2007, has not yet been completed.

#### 6.4. Lease contracts

The Administrators note that DSB Bank is still party to approximately 62 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 counterparties (eight in number) 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. The supervisory judge has referred the case to be heard before the civil chamber of the District Court in Amsterdam on Wednesday 18 made 2011.

#### 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 interest rates in the fourth quarter of 2010, the floating rate on all other contracts has been increased by 0.1 percentage points with effect from 1 January 2011.

## 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. The Administrators are still investigating the quality of the accounting and record-keeping systems.

### 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 have discussions with all 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 all the relevant facts to serve as the basis for these formal and informal meetings. It is still the Administrators' endeavour to have the investigation into the causes of the collapse completed by June 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

At the first meeting of creditors, the supervisory judge consulted the creditors on the appointment of a definitively constituted creditors' committee. The supervisory judge then appointed a definitive creditors' committee, with Chapel 2003-I B.V., ING Bank N.V. and Mr E. Hulshof as its members. Although Mr E. Hulshof does not sit on the committee in his own right, it should be mentioned that he is also chairman of the association DSBspaarder.nl. The first meeting of the definitively constituted creditors' committee was held on 28 January 2011.

The provisional creditors' committee, with Chapel 2003-I B.V., ING Bank N.V., and Société Générale S.A. as its members, met on eight occasions, including one occasion in the period under review. At these meetings, the developments surrounding the settlement of the liquidation were discussed and formal requests for advice were made and answered relating to various decisions.

#### 8.2. Allowed unsecured claims

As reported in the minutes of the first meeting of creditors held on 10 December 2010, there are 7,403 creditors (total of 8,130 claims) representing a total amount of €2,349,177,627 as allowed unsecured creditors, including 6,946 account holders representing a total amount of €101,622,257 and including part of the claim by DNB relating to the DGS totalling €2,206,958,214. The Administrators draw attention to the fact that the amount of allowed claims may rise further as a result of legal proceedings and late claims. See also Section 8.3 below.

#### 8.3. Rejected claims

During the first meeting of creditors, 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. The claims relate to 12 financial market participants (totalling approximately €87 million), 91 suppliers (totalling in excess of €16 million), 67 existing and former employees (totalling in excess of €600,000) and five intercompany receivables (totalling in excess of €850,000). A further 31 claims were rejected from parties claiming ordinary/return commission and 30 claims from private individuals claiming compensation for losses owing to non-payment out of construction mortgage accounts. 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.

In addition, a couple of creditors, namely Stichting Hypotheekleed en Stichting Centralebankclaim, contested an amount of €1.3 billion of the claim by DNB relating to the DGS totalling in excess of €3.5 billion during the first meeting of creditors. The Administrators do not see any reason to reject the claim. The supervisory judge has referred the case to be heard before the civil chamber of the District Court in Amsterdam on Wednesday, 16 February 2011.

The two creditors referred to also challenged six claims filed by the DSB Bank external auditors amounting to a total of €110,878.25. In this case, too, the Administrators do not see any reason to reject the claim and the supervisory judge has referred the case to be heard before the civil chamber of the District Court in Amsterdam on Wednesday 18 May 2011.

#### 8.4. Preferential claim from the UWV

The UWV (the body implementing employee insurance schemes) has submitted a claim totalling €692,405.12. This preferential claim has been allowed by the Administrators. The claim was added to the finalised list of allowed claims by the supervisory judge during the first creditors' meeting held on 10 December 2010.

#### 8.5. Other preferential creditors

See the second public report.

Negotiations are taking place with the Dutch Tax Administration concerning the settlement of the overall tax position of DSB Group, including DSB Bank.

#### 8.6. 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 have been signed off.

#### 8.7. Validation of late claims

The supervisory judge has advised the Administrators of the intention to call one or more separate creditors' meetings as provided by Section 178 of the

Insolvency Act (FW) 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 a later stage, when the negotiations or any legal proceedings involved have made further progress, validation will still be possible for claims filed by the following groups of creditors:

1. Claims concerning duty-of-care complaints, in connection with a possible agreement with the Stakeholder Organisations and otherwise, which cannot be settled by setting them against amounts owed to DSB Bank by the customers concerned;
2. Claims from subordinated deposit holders where it becomes clear at a later stage either as a result of court rulings or otherwise that they should be treated as unsecured claims (which is the view taken by the DSB Depositors Association / Vereniging DSBdeposito's (VDD)) or that they should be treated as subordinated claims (which is the view taken by the Administrators);
3. Claims from the SPVs made against DSB Bank as originator of the securitisation programmes, specifically if it should be found that DSB Bank was in default to some extent if not entirely with regard to its guarantees concerning the quality of the securitised receivables, whether as a result of duty-of-care claims from the debtors concerned or otherwise;
4. Claims from insurers (including DSB Leven N.V. and DSB Schade N.V. in addition to third-party insurers) relating to return commission, i.e. commission repayable by DSB Bank because of the fact that policyholders for whom DSB Bank was instrumental in arranging the insurance and received commission accordingly cancelled their policies prematurely; and
5. Other claims not dealt with during the creditors' meeting held on 10 December 2010 for whatever reason, such as claims from pledgees whose pledges are found not to cover the full amount of their claim.

## **9. Miscellaneous**

9.1. Netherlands Authority for the Financial Markets (AFM)  
See the third public report.

#### 9.2. 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 call centre on +31 (0)88 372 30 00. Lines are open on business days from 09:00 to 17:00.

#### 9.3. 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 5,081.30 hours in the period 1 October 2010 to 31 December 2010 on the liquidation of DSB Bank. During the same period, PwC spent 1,390 hours on the liquidation of DSB Bank.

#### 9.4. 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. Residual activities beyond 2011 are bound to take several more years, albeit becoming less intensive.

#### 9.5. Plan of approach

The Administrators and the organisation of the insolvent entity will continue to work methodically on the settlement of the insolvency. This includes the methodical settlement of complaints and the dialogue with the Stakeholder Organisations regarding the general direction of solutions to be applied. 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.

#### 9.6. Filing of the next report

Expected at the end of April 2011.

Wognum, 28 January 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 December 2010.

**Annex 2:** Summary of the income and expenditure of the insolvent DSB Bank in the fourth quarter of 2010.