

## INSOLVENCY REPORT

Insolvency Report no. 9 by the Administrators of  
**DSB Bank N.V.**

29 July 2011

Draft 27 July 2011

*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.*

### **Main points of this report**

- The meeting of creditors held on 10 December 2010 and subsequently adjourned was closed on 12 May 2011.
- The first meeting of creditors pursuant to Section 178 of the Insolvency Act (**FW**) was held on 19 May 2011. The purpose of this meeting was to enable late claims to be considered. There are still 26 contested claims, totalling almost € 80 million, in respect of which claim validation proceedings are in progress.
- The first distribution list has been available for inspection free of charge at the office of the clerk to the court in Amsterdam since 16 June 2011. This concerns the distribution of 100% on the allowed preferential claims and an initial distribution on the allowed unsecured claims a 15%. No objections to the distribution list were entered. Since 30 June 2011, payments have actually been made. In total, almost €355 million has been distributed.
- At the creditors' meeting held on 10 December 2010, an amount of €1.3 billion of the claim made by De Nederlandsche Bank N.V. (**DNB**) out of a total of more than €3.5 billion was contested by Stichting Hypotheekleed and Stichting Centralebankclaim. The case concerns a claim from DNB relating to payments made under the Deposit Guarantee Scheme (**DGS**). Part of the claim is contested by the above foundations (*stichtingen*) because they believe that DNB has a liability towards DSB Bank by virtue of its failure as regulator. The court in Amsterdam rejected the claim made by the foundations in a judgement given on 13 July 2011. The three-month period in which the decision can be appealed has not yet expired.
- The discussions conducted by the Administrators with what is now two stakeholder organisations and with representatives of five 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 have reached a concluding stage. The Administrators and the Stakeholder Organisations regret that Hypotheekleed announced on 7 July 2011 that it no longer wished to be part of these discussions.
- On 13 July 2011, the Administrators provided information to the noteholders in a conference call organised by the SPVs.
- On 29 June 2011, the Administrators signed agreements with Quion Groep B.V. governing the outsourcing of the servicing of the mortgage and consumer credit portfolios with effect from mid-2012.
- DSB Bank's German loan portfolio has been sold and transferred to Novapars Capital, following a controlled bid process. The amount paid is currently in the hands of a German civil-law notary and is expected to be paid over to DSB Bank in the next few days.
- The Administrators have sold DSB Bank's receivable from Memid Investments B.V. to a third party at face value for an amount in excess of €6.9 million.
- On 30 June 2011, the Trade and Industry Appeals Tribunal (**CBp**) ruled in a case between several DSB Bank customers and DNB that the subordinated deposits offered by DSB Bank were in fact covered by the DGS. The CBp did not rule on the status of the subordinated deposits in the liquidation. The Administrators continue to take the view that these should be treated as subordinated claims in the liquidation.

- DSB Bank currently has approximately 147,000 loans to customers outstanding, totalling an amount of approximately €5.7 billion (more than one loan has been granted to the same borrower in several cases). DSB Bank receives approximately €26.9 million interest per month on these loans. Between the date of the bank's collapse and the end of June 2011, DSB Bank received a total of approximately €1.5 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 €380 million.
- The Complaints Management Department has now had 9,285 complaints submitted to it and 2,740 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, 931 restructuring requests have been acknowledged by the bank and, of these, 911 customers have received a debt restructuring proposal. By far the majority of the responses so far received have been positive; 836 debt restructuring proposals have been signed and returned.
- Appended to this public report are the Financial Reports for 2009 and 2010 (see **Annex 1** and **2** to the report).

**Prospects for creditors:**

In connection with the initial distribution, the allowed preferential claims were paid in full, representing a pay-out of almost €800,000 in total. The pay-out made on the allowed unsecured claims was 15%. This initial distribution to creditors with unsecured claims amounted to a total of almost €354 million.

For the sake of clarity, the Administrators draw attention to the fact that this was an initial, interim distribution. The Administrators expect it to be possible for more interim distributions to be made before the final distribution. Precisely when the next distribution will be possible and what the amount thereof might be is currently unclear. The Administrators are also currently unable to make any predictions regarding the overall percentage that can ultimately be paid.

The Administrators do not envisage that any pay-out will be possible on the subordinated claims.

Details of company	: DSB Bank N.V.
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 April 2011 to 29 July 2011

### **Introductory remarks**

This is the ninth public insolvency report by the Administrators. It covers the period from 30 April 2011 to date (29 July 2011) and contains the financial information relating to the period ending 30 June 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 ninth 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 have been paid in full by the Administrators for reasons of efficiency.

#### *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 allowed by the supervisory judge.

Since 30 June 2011, an initial distribution of 15% has been made. Regarding the overall percentage that can ultimately be paid, the Administrators are currently unable to make any predictions

### 0.2. Subordinated deposit holders

In the eighth public report, it was stated that Vereniging DSBdepositos (**VDD**) had brought an appeal before the CBp 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 DNB under the DGS.

On 30 June 2011, the CBp ruled that the subordinated deposits offered by DSB Bank were in fact covered by the DGS, implying that the holders of the subordinated deposit could submit a claim to DNB (and therefore not to DSB Bank) for payment under the DGS.

DNB has let it be known that holders of subordinated deposits will be able to claim compensation in the period 1 September 2011 to 30 November 2011. Further information will be given on the DNB website and elsewhere in the last week of August 2011. Compensation will only be payable if the customer concerned has not already received the maximum compensation of €100,000 payable under the DGS. For further details, see the websites [www.dnb.nl](http://www.dnb.nl) and [www.dsbdepositos.nl](http://www.dsbdepositos.nl).

The CBp ruling only has implications for the relationship between customers and DNB by virtue of the DGS. The CBp's decision says nothing about the status of the subordinated deposits in the liquidation. The Administrators continue to hold the view that they should be treated as subordinated claims in the liquidation. This view of the Administrators is being challenged in two test cases brought by the VDD. A decision in these cases is awaited (see also Section 0.2 of the eighth public report).

### 0.3. 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 – see Section 0.3 of the eighth public report.

Further information about allowing late claims in the creditors' meetings pursuant to Section 178 of the FW can be found in Section 8.6 of this public report.

### 0.4. 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 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 put in place various arrangements for customers with serious payment problems. See Sections 5.9 to 5.11 of this public report for details of these schemes.

**1. Introduction**

Principal activities in the recent reporting period

- 1.1. For the principal activities of the Administrators in the recent reporting period, see the first two pages of this public report. The Administrators also mention the following activities.
- 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. Talks have also since been held concerning the latter with other insurance companies whose products were sold through DSB Bank.
- 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. In the recent reporting period, the Administrators succeeded in selling the much smaller German portfolio to Novapars Capital. See Section 4.6 of this public report for details.
- 1.5. In the period under review, the Administrators continued with the usual investigations into the causes of the collapse. The formal meetings with the various individuals and organisations concerned have now been concluded. The Administrators refer to Section 7.5 of this public report.
- 1.6. Regular plenary meetings are 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. They have, however, reached a concluding stage.

**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. 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. Eleven 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.

#### 2.4. Individual cases brought before the courts since the collapse

In the reporting period, the Administrators, together with DSB Life, DSB Non-Life and a number of insurance companies not forming part of the DSB Group have been sued on two occasions by customers of DSB Bank. Neither of these cases has yet reached a conclusion.

For an overview of the remaining claim validation proceedings see Section 8.4 of this public report.

#### 2.5. Collective proceedings

Acting on a collective basis, Stichting Hypotheekleed has brought a case against the Administrators within the meaning of Section 3:305 a of the Netherlands Civil Code. On behalf of the customers of DSB Bank, Hypotheekleed is seeking a court ruling that individual out-of-court expenses will be included in the amount of damages awarded which DSB Bank may be found to be liable for vis-à-vis at least some of its customers. The Administrators have since submitted a statement of defence, arguing, among other things, that in deciding the amount of any out-of-court expenses to be awarded – where justifiable – account should be taken of the collective nature of the solutions being sought to the problems of duty-of-care complaints.

#### 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 now rents only the following two premises from group entities:

- Jan Leentvaarlaan 37-47, Rotterdam.

- Protonweg 32, Hoorn;

The lease on the premises at Jan Leentvaarlaan 37-47, Rotterdam, will be terminated at the end of August 2011. The cancellation contract has still to be signed by the parties concerned. The lease on the premises at Protonweg 32, Hoorn, will be continued for the time being.

##### *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 237 employees (189.46 full-time equivalents) and 26 staff (19.3 FTEs) employed by DSB Insurance, a wholly-owned subsidiary of DSB Bank. The insolvent entity also uses the services of more than 40 self-employed persons.

To the Administrators' knowledge, more than 90% of the former employees of DSB Group have now found new jobs or become self-employed.

3.4. Provisional continuation of activities

The Administrators have previously 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. Approximately 40 employees have since been told that their employment will continue to at least the end of 2012. 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 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. In offering this programme, the Administrators aim 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. The programme will also benefit the motivation of the remaining employees.

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 previously reached agreement on the accrual of pension rights of employees still working for DSB Bank. The contracts concerned have since been 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

See the previous public reports.

4.3. Registered property

See also the preceding public reports. A large 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. The efforts to sell two premises have been suspended for the time being as they are being used to provide temporary accommodation for the organisation.

4.4. Other assets

So far Troostwijk Veilingen B.V. has auctioned off the surplus office furniture and related equipment of 10 DSB Bank branches. The furniture at four other locations has been sold to the new owners of the premises concerned. Another auction is scheduled for August 2011.



#### 4.5. Sale of the receivables

##### *German portfolio*

A controlled bid process was followed in relation to DSB Bank's German portfolio. This process has since been successfully concluded, resulting in a transaction transferring the loan portfolio to Novapars Capital. The amount paid is currently in the hands of a German civil-law notary and is expected to be paid over to DSB Bank in the next few days. Novapars Capital has taken over the servicing of the portfolio in Germany and taken on all 16 German staff together with the office premises and the existing office equipment.

##### *Memid Investments*

DSB Bank's receivable, secured by a first mortgage, from Memid Investments B.V., which has since been declared insolvent, has been sold to a third party at face value for an amount in excess of €6.9 million. The purchase price has been paid to the insolvent entity.

#### 4.6. 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. The company is functioning normally and is currently preparing for a change of name.

##### *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 5.12 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. The Administrators do not currently see any reason to reopen the process of selling off the Belgian companies and portfolio. Although a number of parties have shown interest, the Administrators do not think it likely that this will lead to an acceptable offer/transaction for the creditors as a whole. Alternative routes are currently being explored, with the primary objective of assuring the continuity of servicing of the portfolio.

*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 also the previous public reports. Now that the sale and transfer of the German loan portfolio has taken place, with the buyer taking on the entire German staff, the premises and the office equipment, the affairs of these entities can be settled.

#### 4.7. 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 at the time of the collapse, reference is made to Annex 2 to the first public report. An update is provided by the 2010 Financial Report, which is appended to this public report as Annex 2.

#### 5.2. Global Corporate Jets

In August 2008, DSB Beheer B.V. sold an aircraft to Global Corporate Jets. In connection with the sale, Global Corporate Jets obtained financing from DSB Bank, secured by a mortgage on the aircraft. Some time ago, Global Corporate Jets ceased making its payments. The amount owed by Global Corporate Jets currently stands at more than €5.6 million. The Administrators are considering foreclosure and selling off the aircraft.

#### 5.3. Settlement of complaints

A total of 9,285 complaints have now been registered with the Complaints Management Department (at the time of the eighth public report: 8,990). Of these complaints, 2,740 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 eighth public report: 2,712).

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 674 complaints have been settled. This number excludes the 836 customers that have accepted a debt restructuring proposal.

#### 5.4. 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.

#### 5.5. 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. With the withdrawal of Stichting Hypotheekleed, the following Stakeholder Organisations are involved in these talks:

- Stichting Steunfonds Probleemhypotheken;
- Stichting Platform Aandelen Lease; and

- five individual legal assistance insurers, viz. Stichting Achmea Rechtsbijstand, Stichting Univé Rechtshulp, Stichting Schaderegelingkantoor voor Rechtsbijstandverzekering, Algemene Rechtsbijstand Verzekerings-maatschappij N.V. (ARAG-Nederland) 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, although they are now at a concluding stage. The partial solution reached regarding Hollands Welvaren Select complaints has now been largely implemented.

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.

#### 5.6. 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. Almost all of the affected customers have now accepted the proposal.

#### 5.7. Set-off

As in the recent reporting period, a number of customers again 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.

#### 5.8. 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.

#### 5.9. 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 who are entitled to this settlement, 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.

#### 5.10. 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, 2,111 debt restructuring applications have been assessed, of which 53% have been rejected. 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. A total of 992 customers have so far received a debt restructuring proposal. Of these, 836 have been signed in agreement and returned.

5.11. 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.

5.12. 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 5.9, 5.10 and 5.11 of this public report).

## 6. Bank finances / collateral security held

6.1. Financial statements

Annexes 1 and 2 to this public report contain the Financial Reports for 2009 and 2010.

Annex 3 to this public report contains (i) a summary of the income and expenditure of the insolvent DSB Bank from the date of the collapse up to the end of June 2011 and (ii) a financial summary of the income and expenditure of the insolvent DSB Bank during the second 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 €380 million (eighth report: €157 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. Servicing of loan portfolios

It was stated in the eighth public report that the Administrators' exploration of the possibilities for a strategic alliance of the servicing organisation of DSB Bank with a reputable third-party had reached an advanced stage.

The Administrators have now completed this process and have agreed with Quion Groep B.V. and its subsidiaries Quion Hypotheekbegeleiding B.V. and Quion Services B.V. (**Quion**) that, with effect from mid-2012, Quion will take over the servicing of the mortgage and consumer credit portfolios (excluding Belgium) (as described in detail below). The Administrators and Quion signed a transition agreement and four service agreements to this effect on 29 June 2011.

In the transition agreement, the Administrators and Quion established a technically complex conversion and migration process covering the conversion of DSB Bank's credit portfolio computer files and their subsequent migration to the systems operated by Quion. Data eXcellence B.V. and Topicus Z B.V. have been contracted to perform part of the conversion and migration process.

On completion of the conversion and migration process, Quion will manage the loan portfolios on a fee basis as from mid-2012. This servicing by Quion applies to both DSB Bank's proprietary loan portfolios and to the loan portfolios included in the securitisation programmes. With regard to the latter group of portfolios, the SPVs which acquired the loans when they were securitised have the

right to enter into a direct contractual relationship with Quion for the servicing activities, on mutually agreed conditions. Each of the SPVs have until 30 September 2011 to give notice that they do not wish to avail themselves of the services provided by Quion. The SPVs will be consulting the securitisation programme noteholders on this matter.

The service agreements concluded between DSB Bank and Quion are initially for a period of five years.

#### 6.4 Securitisation programmes

For a summary of the existing securitisation programmes, reference is made to Annex 2. Reports containing the most important information relating to the underlying loan portfolios are prepared on behalf of the SPVs either monthly or quarterly for the individual programmes. This information forms part of the regular reporting by the SPVs to the noteholders.

In the recent reporting period, the Administrators also had regular meetings with the SPVs and provided information to the noteholders in conference calls organised by the SPVs. These took place on 24 March and 13 July 2011. On these occasions, the rating agencies were also separately advised concerning the recent developments. These conference calls covered the status of the DSB organisation, servicing of the portfolios, arrears, carrying-over rate policy and duty-of-care issues. Additionally, in a separate conference call on 29 April 2011, the Administrators talked to the rating agencies about the impact of a possible compensation scheme for single premium policies on the loans in the securitisation programmes, without anticipating the possible outcomes of the discussions with the Stakeholder Organisations. This information has been made available by the SPVs to the noteholders.

Briefing conferences with noteholders will in future be organised each quarter or more frequently if warranted by developments. The Administrators have also indicated to noteholders their readiness to engage in informal talks with a representative delegation from this group of stakeholders in the liquidation of DSB Bank. This offer has so far not been taken up, partly owing to the associated conditions stipulated by the Administrators.

#### 6.5. Lease contracts

DSB Bank is still party to approximately 45 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.

#### 6.6. 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.

#### 6.7. 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.

#### 6.8. Hedges

The investigation into the correctness of the cancellation payments demanded by the swap counterparties has not yet been completed.

#### 6.9. Interest rate policy

In October 2010, the Administrators implemented a new policy for setting floating and fixed interest rates. As from that date, interest rates are calculated using a transparent formula based on the capital market interest rate plus a fixed mark-up. This policy adopted by the Administrators can be found on the website [www.dsbbank.nl](http://www.dsbbank.nl).

In October 2010, 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 was 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 was increased. Despite the link to the capital market interest rate, it became apparent to the Administrators in the recent reporting period that the rates charged by DSB Bank were higher than the average loan rates of other market participants. The Administrators have since adjusted the interest rates. With effect from 1 July 2011, DSB Bank has lowered the interest rate for customers carrying over from one account to the next. The policy on penalties for carrying over has also changed.

## **7. Lawfulness**

### **7.1. Duty to keep proper accounts**

In the course 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 the parties concerned, setting out, among other things, the framework for the formal discussions and exchange of information between the Administrators and these parties.

In the recent reporting period, the Administrators have continued discussions with all the parties concerned covering general and specific matters relating to the collapse of the bank (and the background to it). The Administrators expect to be able to report on the actual investigation in November 2011. When an analysis of the findings of this investigation has been made, the Administrators will 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.

## **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. Once again in the recent reporting period, two full meetings of the Administrators and the creditors' committee were held, in May and in July 2011. At these meetings, the developments surrounding the settlement of the liquidation were discussed, with telephone and written contacts taking place in the interim as necessary. Formal requests for advice on proposed decisions are made by the Administrators to the creditors' committee.

### **8.2. Validation of claims**

The supervisory judge adjourned the creditors' meeting held on 10 December 2010 until 3 February 2011 (for a few creditors only) – on a 'pro forma' basis – and subsequently until 12 May 2011. While the meeting was adjourned, the Administrators held talks with the creditors whose claims were contested with a view to agreeing the amounts of their claims. These negotiations resulted in a number of claims in fact being allowed by the Administrators. A large number of claims were also withdrawn during the period of adjournment. A list of the allowed claims, agreed amounts and

withdrawn claims relating to the originally contested claims has been appended to the minutes of the pro forma meeting held on 12 May 2011. These minutes can be found on the website <http://verificatie.dsbbank.nl>.

On 12 May 2011, the creditors' meeting opened on 10 December 2010 was closed. During the meeting, the contested claims in respect of which agreement had been reached between creditors and the Administrators in the interim were added to the list of allowed claims. The claims in respect of which no agreement has been reached will be decided in claim validation proceedings. For further details of the claim validation proceedings, see Section 8.7 of this public report.

On 19 May 2011, a meeting of creditors pursuant to Section 178 of the FW took place, for the purpose of allowing late claims.

### 8.3. Future meetings of creditors pursuant to Section 178 of the Insolvency Act (FW)

The supervisory judge advised the Administrators 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.

### 8.4. Remaining claim validation proceedings

During the meetings held on 10 December 2010 and 19 May 2011, a total of 64 claims was contested (of 57 creditors). Of these claims, one has since been withdrawn and 33 creditors with 36 contested claims did not respond in time, resulting in the forfeiture of their claims. This therefore leaves 26 cases to be decided in claim validation proceedings (concerning 22 creditors). In relation to these claim validation proceedings, the Administrators have the following comments.

#### *Claims by DNB*

Two of the claim validation proceedings relate to claims submitted by DNB. The first of these claims, amounting to €8.9 million, relates to the costs of administering the DGS. The Administrators contest both the grounds for and the amount of this claim. The second claim, amounting to €3.2 million, has been submitted by DNB on a contingent basis and concerns the amounts still potentially to be paid out by DNB under the DGS to creditors who have filed claims with DNB under the scheme.

#### *Business creditors*

A number of claim validation proceedings relate to claims from business creditors. It concerns among other things a claim from UPC Nederland Business B.V. concerning costs relating to telephone contracts which were cancelled after the date of the collapse. The Administrators did, however, reach specific agreements with UPC regarding this matter and dispute the fact that they have any liability in respect of the costs.

#### *Financial institutions*

Two of the claim validation proceedings relate to claims submitted by financial institutions. Société Générale and NIBC argue that they have a claim by reason of early termination of the back swaps under the securitisation programmes.

#### *Duty of care*

A number of claim validation proceedings relate to claims from customers of DSB Bank in relation to possible dereliction of the duty of care on the part of DSB Bank. These cases had already been brought before the date of the collapse and their status remains that obtaining at the time of the declaration of insolvency.

### *Employees*

A number of claim validation proceedings have also been brought relating to claims from employees of DSB Bank. In one of these cases, the Administrators have contested a claimed bonus on the grounds of insufficient evidence of entitlement. In another case, an employee claims that the interest he is paying on the mortgage loan for staff is too high. The employee concerned is claiming a refund of what he sees as the excessive interest paid.

### *Skaters*

A couple of claim validation proceedings relate to claims from skaters who were formerly part of the DSB skating team. They are claiming competition money and training costs. The two skaters, however, have previously declared in writing that they have no further claims on DSB Bank, and their claims are accordingly contested by the Administrators.

### *Subordinated deposit holders*

A number of claim validation proceedings relate to claims from holders of subordinated deposits. These creditors have associated themselves with the VDD. Their claims are seen by the VDD as test cases.

In another claim validation proceeding relating to a subordinated deposit holder, the creditor argues that the contract is null and void on the grounds of error and that she paid the amount by mistake. The Administrators contest the claim based on mistaken payment.

### *Interest*

A number of claim validation proceedings relate to claims concerning interest since the date of the collapse. The Administrators contest this claims on the grounds of Section 128 of the FW.

#### 8.5. Claims contested by fellow creditors

At the creditors' meeting held on 10 December 2010, an amount of €1.3 billion of the claim made by DNB out of a total of more than €3.5 billion was contested by Stichting Hypotheekleed and Stichting Centralebankclaim. The case concerns a claim from DNB relating to payments made under the DGS. Part of the claim is contested by the above foundations (stichtingen) because they believe that DNB has a liability towards DSB Bank by virtue of its failure as regulator. The court in Amsterdam rejected the claim made by the foundations in a judgement given on 13 July 2011. The three-month period in which the decision can be appealed has not yet expired.

#### 8.6 Liabilities of the insolvent entity

In view of the position of the insolvent entity, the Administrators will shortly pay amounts agreed by them as being owed by the insolvent entity.

### **9. Miscellaneous**

#### 9.1. Tax matters

In previous public reports, mention has already been made of the agreement signed in March 2011 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) received a net amount of €23.7 million (including interest) in June 2011, to be paid into the insolvency account. 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 will allow an additional claim of €24.6 million in the winding up of DSB Beheer. Apart from that, a separate additional claim in the winding up of DSB Beheer is expected based on two specific agreements between DSB Bank and DSB Beheer relating to the transfer of tax losses of DSB Beheer and some of its (former) subsidiaries (refer to the financial report 2010 of 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 5,318.5 hours in the period 1 April 2011 to 30 June 2011 on the liquidation of DSB Bank. During the same period, PwC spent 728 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, the liquidation of the assets and the investigation into the causes of the collapse. 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 October 2011.

Wognum, 29 July 2011

R.J. Schimmelpenninck

Administrator

B.F.M. Knüppe

Administrator

**Annexes:**

Annex 1: Financial Report 2009.

Annex 2: Financial Report 2010.

Annex 3: Summary of the income and expenditure of the insolvent DSB Bank from the date of the collapse up to the end of June 2011.