

# INSOLVENCY REPORT

Insolvency Report no. 12 by the Administrators of

**DSB Bank N.V.**

26 April 2012

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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 in the future to publish other information concerning the case and the progress of the insolvency proceedings.*

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## **Main points of this report**

- On 24 May 2012, a second meeting of creditors will be held. The sole business of this meeting will be to allow late claims of creditors, mainly from existing and former customers of DSB Bank, made under the Compensation Scheme (**Scheme**).
- Having obtained the approval of the finalised committee of creditors (**Creditors' Committee**), the Administrators will invite the supervisory judge to order a third interim distribution of 4%. This distribution is expected to take place at the end of June 2012.
- On 5 April 2012, the meeting of creditors of DSB Beheer B.V. (**DSB Beheer**) took place. On behalf of DSB Bank, the Administrators have submitted a claim totalling approximately €106 million. Of this claim, €56 million has been allowed and €50 million has been contingently allowed, pending the proceeds from the pledged assets.
- In the period February to May 2009, DSB Bank paid out a total of €11.3 million in interim dividend, implementing a resolution to that effect by DSB Ficoholding N.V. (**DSB Ficoholding**). DSB Ficoholding in turn paid this interim dividend as interim dividend to DSB Beheer. At the above meeting of creditors, the Administrators of DSB Beheer contested the claim from DSB Ficoholding amounting to approximately €11.6 million (including interest) in order to allow the basis of this claim to be more closely investigated.
- In total there still remain 13 claims that are contested by the Administrators, amounting to a total of approximately €56 million, in respect of which claim validation proceedings are pending.

- The implementation of the Scheme which the Administrators agreed with two stakeholder organisations and five legal assistance organisations – represented by a lawyer appointed by them – (**Stakeholder Organisations**) on 19 September 2011 is generally going smoothly. More information on the Scheme can be found on the website [www.dsbcompensatie.nl](http://www.dsbcompensatie.nl), which is managed jointly by the Administrators and the Stakeholder Organisations.
- Out of the approximately 10,000 customers who had filed claims with DSB Bank by 19 September 2011, almost 9,000 have now received a proposal relating to Phase 1 (compensation for insurance policies and securities lending products). More than 4,800 customers have since accepted the proposal made to them. In addition, there are almost 3,000 customers who will be receiving a compensation proposal for Phase 2 (compensation for excessive lending) as well. Nothing has so far been heard from the remaining customers who received a Phase 1 compensation proposal.
- Additionally, since 19 September 2011, in excess of 10,000 customers who had not previously made a claim against DSB Bank have now applied for inclusion in the Scheme. This number is increasing by between 110 and 180 new applications every week. More than 3,300 of these customers recently received a Phase 1 compensation proposal and more than 1,800 customers have already accepted said proposal.
- During the next reporting period, the emphasis with regard to the implementation of the Scheme will be on processing the applications for Phase 2, i.e. compensation for excessive lending.
- Stichting Hypotheekleed (**Hypotheekleed**), it transpires, will now not be appealing against the decision of the court in Amsterdam, delivered on 2 November 2011, rejecting the claim for payment of out-of-court expenses.
- DSB Bank currently has approximately 128,000 loans to customers outstanding, totalling approximately €5.4 billion (multiple loans to the same borrower in some cases). DSB Bank receives approximately €26 million per month in interest on these loans. Between the date of the bank's bankruptcy and the end of March 2012, DSB Bank received a total of approximately €2.1 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 €347 million (position as at 31 March 2012: €373 million).

- On 24 February 2012, DSB Bank's 2011 Financial Report was published on the websites ([www.dsbbank.nl](http://www.dsbbank.nl) en [www.houthoff.com](http://www.houthoff.com)). An English translation can be found on both websites.
- In recent months, the Administrators have been working on the report relating to the causes of the bankruptcy of DSB Bank N.V. The report is expected to be published by mid-June 2012.

**Prospects for creditors:**

At the end of June 2011, an initial distribution of 15% was made. Details can be found in the ninth and tenth public reports. At the end of November 2011, the supervisory judge instructed a second interim distribution of 4% to be made. Details of this distribution can be found in the 11th public report. A total of 19% has now been paid out on the allowed unsecured claims.

The Administrators will – after obtaining the approval of the Creditors' Committee – shortly be discussing with the supervisory judge the possibility of making a third interim distribution to unsecured creditors with allowed claims. This distribution is expected to amount to 4% and will be made at the end of June, if possible.

The Administrators expect it to be possible to make further interim distributions. The Administrators are, however, currently unable to make any predictions regarding the overall percentage that can ultimately be paid. At least once a year, the Administrators will discuss the possibility of making subsequent distributions – again having first obtained the agreement of the Creditors' Committee.

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



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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, reference is made to the previous public reports.

**0.2. Subordinated deposit holders**

On 30 June 2011, the Trade and Industry Appeals Tribunal (**CBp**) ruled that the subordinated deposits offered by DSB Bank were in fact covered by the Deposit Guarantee Scheme (**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. The dispute is before the courts. See Section 8.34 of this 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. For more information about allowing late claims in the creditors' meetings pursuant to Section 178 of the FW, the Administrators refer to Section 8.23 of this public report.

**0.4. Complaints or counterclaims from customers with loans**

A special Scheme applies to existing and former customers of DSB Bank with single-premium policies, investment plans, claims of excessive lending and other duty-of-care complaints. Customers qualifying for this Scheme who have not yet submitted a complaint can apply via the website [www.dsbcompensatie.nl](http://www.dsbcompensatie.nl). See Section 5.34 of this public report.

Customers wishing to make a complaint not related to duty of care should address their complaints to the Administrators by e-mail to [curatoren@dsbbank.nl](mailto:curatoren@dsbbank.nl) or by writing to Curatoren DSB Bank, t.a.v. afdeling Klachtenmanagement, Postbus 70, 1687 ZH Wognum, Netherlands.

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. These arrangements are described in Sections 5.8 et seq. of this report.

**1. Introduction**

Principal activities in the recent reporting period

- 1.1. For the principal activities of the Administrators in the most recent reporting period, see the first few pages of this public report. The Administrators also mention the following activities.

The Administrators continue to liaise with the directors and/or administrators of DSB Beheer and its subsidiary group companies, including with regard to the current account positions between the entities. Meetings are also held periodically with the life and non-life insurance entities DSB Leven N.V. (**DSB Leven**), DSB Schade N.V. (**DSB Schade**) and life insurer Hollands Welvaren Leven N.V. (**HWL**), particularly with regard to the implementation of the Scheme.

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 special-purpose vehicles (**SPVs**).

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 period under review, the Administrators continued with the usual investigations into the causes of the bankruptcy. The Administrators refer to Section 7 of this public report.

Regular plenary meetings continue to be held with the Stakeholder Organisations even after the establishment of the Scheme. Topics of discussion include the administration of the Scheme and monitoring of compliance with the Scheme and the content of the website. See Section 5.3 of this public report.

## **2. Current situation**

### **2.1. Management and organisation**

See the first public report. For details of the structure of DSB Group, particular 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 bankruptcy**

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 bankruptcy have been suspended ipso jure by virtue of the insolvency. Proceedings in which DSB Leven and/or DSB Schade are also defendants alongside DSB Bank have been suspended with respect to DSB Bank but continue with respect to DSB Leven and/or DSB Schade. In three of these cases, a statement of defence has been delivered by DSB Leven and/or DSB Schade. Two of these cases are to be dropped at the request of the litigants, who have reached an out-of-court settlement. In the third case, settlement negotiations are in progress.

A number of proceedings have also been struck off ex officio. The cases concerned can be re-instigated at the request of either party.

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 bankruptcy is still five.

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.

In five of these debt recovery cases brought by DSB Bank in which counterclaims have been submitted, a joint meeting in chambers was held at the district court in The Hague on 27 June 2011. As reported in the tenth public

report (Section 2.3), the court in The Hague passed judgement in three of these cases last year. One of these judgements has been appealed.

As mentioned in the 11th public report (Section 2.3), the district court in The Hague delivered an interim judgement in the fourth case on 11 January 2012. For the details of this judgement, reference is made to the 11th public report (Section 2.3) and to the website [www.dsbcompensatie.nl](http://www.dsbcompensatie.nl). At the request of the Administrators, the district court in The Hague has allowed the judgement given on 11 January 2012 to be taken to appeal. The case is now due to be heard again before the Appeal Court in The Hague on 1 May 2012.

The fifth case was dropped following amicable settlement.

As regards the cases in which DSB Bank is claimant and no counterclaim has been submitted, the desirability of pursuing the claims is being examined on an ad hoc basis.

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

In July 2011, the Administrators, together with DSB Leven, DSB Schade and a number of insurance companies not forming part of the DSB Group, were sued on two occasions by customers of DSB Bank. In one of these cases, a decision has been given. In the other case, the Administrators have submitted their defence. A meeting in chambers will be held on 8 May 2012.

The Administrators were also sued by a number of customers of DSB Bank in March 2012. The Administrators are considering the issue and will either be mounting a defence or seeing if it is possible to bring the case to a close by means of an amicable arrangement.

For an overview of the remaining claim validation proceedings see Section 8.34 of this public report.

#### 2.5. Collective proceedings

As mentioned in the 11th public report (Section 2.5), the stakeholder organisation Hypotheekleed (chairman P. Lakeman), acting on a collective basis, 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 sought a court ruling that out-of-court expenses would be included in the amount of damages awarded for which DSB Bank might be found to be liable vis-a-vis its customers.

The court passed judgement in the above case on 2 November 2011 (see [www.rechtspraak.nl](http://www.rechtspraak.nl), case number LJN: BU3296), upholding the Administrators' arguments and rejecting Hypotheekleed's claim. In the course of the period under review, it transpired that Hypotheekleed would not be appealing the decision. The awarded costs have now been paid.

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*

See the previous public reports.

*Premises rented from third parties*

DSB Bank has reached agreement with the Medemblik Municipal Authority on renewal of the lease for the office at Dick Ketlaan 1-15 (including several rooms for computer equipment) for 2013. DSB Bank continues to need the premises in connection with the necessary activities relating to the Scheme (in particular) and also for the later migration of the servicing of the loan portfolio to Quion. The agreements reached will be formalised in various schedules.

*Premises leased to third parties*

The office at J. Duikerweg 15b in Heerhugowaard houses the insurance operations (Tadas B.V., DSB Leven and DSB Schade) and the Inspectrum Payment Collection Department. It is policy to find tenants for the remaining parts of the building as far as possible. The premises will not be sold before it is clear whether and in what way they might be required in bringing the insolvency proceedings to a conclusion.

**3. Staff**

3.1. Number of employees at the time of the bankruptcy

See the second public report.

3.2. Number of years of service prior to the bankruptcy

See the second public report.

3.3. Employees

DSB Bank currently has 203 employees (160 full-time equivalents) excluding the 26 employees of Tadas B.V., a wholly-owned subsidiary of DSB Bank. The insolvent entity also uses the services of more than 72 self-employed persons. The latter figure has increased in connection with the implementation of the Scheme among other things.

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

By the end of 2012, the number of employees will have dropped to approximately 140, largely owing to the transfer of loan portfolio servicing to Quion. Although a considerable number of the staff in question will continue to find work connected with the servicing, they will be employed by Quion. In 2013, staff will mainly be involved in implementing the Scheme, in specific activities connected with the winding-up operation and a number of support duties. It continues to be the Administrators' policy to notify the staff at the earliest possible stage concerning the expectations regarding the rundown of the activities concerned.

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 with the unions.

**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. See also Section 6.4 concerning the transfer of the servicing of the mortgage portfolio to Quion.

4.3. Registered property

See also the preceding public reports. All of DSB Bank's registered property has now been sold except for one building. The efforts to sell the latter premises

have been suspended for the time being as they are being used to provide accommodation for the organisation.

4.4. Other assets

The remaining business equipment etc. is all being used in connection with the winding-up operations and will only be disposed of as staff are shed.

4.5. Sale of German loan portfolio

As mentioned in previous reports, the German portfolio has been sold. DSB will be supporting the new owner with ICT activities up to the end of 2012. See Section 4.5 of the tenth public report.

4.6. Claim on DSB Ficoholding

The Administrators refer to Section 4.6 of the 11th public report. The Administrators believe that DSB Bank has a claim on DSB Ficoholding amounting to €11.3 million. DSB Ficoholding has in turn filed a claim against DSB Beheer in the liquidation of DSB Beheer in respect of interim dividend paid to DSB Beheer in 2009 (excluding approximately €0.3 million in interest) to which DSB Beheer was not entitled. The Administrators of DSB Beheer have contested this claim in order for the basis of the claim to be more closely investigated.

4.7. 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.

*Tadas 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.

Tadas Verzekeringen B.V. is also the employer of individuals who work for DSB Leven. These activities are subject to a service level agreement.

*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.*

The company Inspectrum Groep BV was wound up in the first quarter of 2012. The activities which the company carried on connected with payment collection and management of arrears are being continued on the same basis within DSB Bank. The activities concerned will be taken over by Quion when the loan portfolio is transferred to the latter company. The staff currently performing this work at DSB Bank, with a few exceptions, will then join Quion.

*Paul.nl B.V.*

See the first public report.

*DSB Belgium N.V.*

In order to guarantee the continuity of the servicing of the Belgian portfolio, the Administrators have 'outsourced' the actual servicing activities. The loan portfolio itself continues to be owned by DSB Bank (indirectly). Although the Belgian portfolio has been transferred to a new entity, the Belgian companies continue to look after the servicing of the Belgian portfolio. The DSB Bank ICT Department will be providing support for the activities concerned up to the end of 2012.

*DSB International*

This company is the company lying between DSB Bank and the entity now in charge of the Belgian loan portfolio.

4.8. Domain names

A considerable number of domain names have now been transferred to third parties, involving various transactions. 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 bankruptcy, reference is made to Annex 2 to the first public report. An update is provided by the 2011 Financial Report, which was published on 24 February 2012.

### 5.2. Global Corporate Jets

For the background, see Section 5.2 of the ninth public report.

The negotiations on the sale of the aircraft are now at an advanced stage. It is expected that the sale can be completed and the aircraft handed over in the next reporting period. DSB Bank will then be able to recover a certain amount from the proceeds. However, there is no change in the prospect that the proceeds from the sale of the aircraft together with the sale of other assets will be insufficient to meet the liabilities of Global Corporate Jets.

### 5.3. Landsbanki liquidation payout

In December 2011, DNB received an initial distribution in the liquidation of Landsbanki amounting to more than €65 million, this money subsequently being shared among the Dutch banks, with DSB Bank accordingly receiving an amount of more than €660,000. Subsequent distributions are awaited.

### 5.4. The Scheme

#### *Introduction*

The negotiations between the Administrators and the Stakeholder Organisations reached agreement on a Scheme in September 2011, as set forth in a comprehensive Heads of Agreement. The Scheme provides for the award of compensation in cases of actual or alleged dereliction of the duty of care and applies to existing and former customers of DSB Bank with single-premium policies, investment plans and securities lending products as well as customers with complaints regarding excessive lending.

The Heads of Agreement were supplemented on 27 March 2012 with an Excessive Lending Schedule, detailing the manner in which Phase 2 compensation for excessive lending would be worked out.

Next week – as already provided for in the Heads of Agreement – Stichting Belangen Rechtsbijstandverzekeren DSB will be established to look after the interests of customers affiliated to one of the legal assistance organisations. The

*stichting* (the new stakeholder organisation) will automatically be party to the Heads of Agreement, as provided for in Article 1.1.4.

The details of the Scheme can be found on [www.dsbcompensatie.nl](http://www.dsbcompensatie.nl). This website, which is jointly managed by the Administrators and the Stakeholder Organisations, has a high number of visitors. The total number of unique visitors as at 21 April 2012 had risen to more than 54,000.

#### *Committees*

The Committees Schedule is shortly due to be published on the website. In it, the parties to the Heads of Agreement give details of the composition of the two Committees and the contents of the rules as well as the contact details, together with other information. The members of the Disputes Committee are Ms W. Tonkens (chairman), Ms E. Swaab and R.Ch. Verschuur. The members of the Special Circumstances Committee are H.J. Bunjes (chairman), Ms S. den Ouden - Huijgen and J.H. Mersmann.

Acting as secretary to both Committees will be O.R. van Brunschot. The postal addresses and e-mail addresses for the two Committees are given below:

Disputes Committee  
Postbus 78529  
1080 KA Amsterdam  
[geschillencommissieDSB@rsdw.nl](mailto:geschillencommissieDSB@rsdw.nl)

Special Circumstances Committee  
Postbus 75986  
1070 AZ Amsterdam  
[CBODSB@bdn.nl](mailto:CBODSB@bdn.nl)

*Rollout of the Scheme : complaints and Stakeholder Organisations*

As agreed in the Heads of Agreement, the Administrators began by compiling and sending out compensation proposals (**Proposal Letters**) for Phase 1 (compensation for insurance policies and securities lending products) to those customers who had submitted complaints to DSB Bank or to one of the Stakeholder Organisations by 19 September 2011. As at 23 April 2012, almost 9,000 of these proposals had been sent out. The remaining proposals (approximately 1,000) will be sent out in the next reporting period. These remaining proposals, incidentally, generally relate to customers with payment problems or very complex cases. It has been decided that these customers should receive a combined proposal for Phase 1 and Phase 2 (compensation for excessive lending). The customers concerned have been notified accordingly.

The response has been good. As at 23 April 2012, for instance, a total of 4,848 compensation proposals had been accepted and returned. And almost 2,953 customers have indicated their intention to wait for the Phase 2 compensation proposal before deciding. Only a few tens of customers have indicated that they do not accept the proposal on offer.

A start was made in mid-March 2012 on sending out letters (**Documentation Request Letters**) to those customers applying for Phase 2. The letters give details of the documents which customers need to submit for the purposes of calculating the Phase 2 compensation (excessive lending).

*Rollout of the Scheme: Applications via [www.dsbcompensatie.nl](http://www.dsbcompensatie.nl)*

In the period 19 September 2011 to 21 April 2012, approximately 10,381 customers who had not previously made a claim against DSB Bank applied for inclusion in the Scheme. This number is growing by between 110 and 180 new applications every week.

Of this group, 3,370 customers have indicated that they only wish to apply for the Phase 1 compensation. So far, 3,336 of these customers have received a Proposal Letter and 1,802 of them have since accepted and returned the proposed offer. Only one customer has so far expressly rejected the offer.

Customers who have applied online for both Phase 1 and Phase 2 can expect to receive a Documentation Request Letter from the end of April 2012 onwards.

### *Costs of the Scheme*

The total costs to DSB Bank depend partly on the personal financial situations of the individual customers and the number of customers applying for the Scheme but will not exceed about €550 million at face value, including the actual amounts of the unsecured claims which some of the customers and SPVs will have on which normal distributions will be made. The Administrators estimate that the ultimate costs of the Scheme will amount to several hundred million euros. Up to the end of March 2012, a total of 4,283 Phase 1 compensation claims had been dealt with. As can be seen in Annex 2 to the present report, this results in a total of €19.3 million in respect of compensation which has been set against amounts owed by customers to DSB Bank and in compensation totalling €3.7 million which will be settled as a claim on the insolvent entity or as an unsecured claim.

### *WCAM*

When details of the customers applying for compensation under the Scheme have been processed, the Stakeholder Organisations and the Administrators will request the court in Amsterdam to declare the Scheme binding under the Collective Mass Claims Settlement Act (WCAM) in the course of 2012. When the Scheme has been declared legally binding, this will also mean that in due course (after the application deadline has passed) no new applications for the Scheme and no further duty-of-care complaints will be entertained.

### *Insurers*

The necessary cooperation with the affected insurers is proceeding smoothly. For further information, reference is made to the 11th public report.

#### 5.5. Settlement of other complaints

A small proportion of the complaints concern questions not related to duty of care. These complaints are being dealt with on an individual basis.

#### 5.6. 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-a-vis that customer, whether as a result of a court ruling or an out-of-court settlement, the consequent loss may be set against the existing amount of that customer's indebtedness to DSB Bank.

5.7. Applications under the Compensation Scheme and new complaints

Customers wishing to apply for the Scheme can complete an application form online by going to [www.dsbcompensatie.nl](http://www.dsbcompensatie.nl). The application form can also be obtained by telephoning 088 - 372 66 66. Customers with different complaints can submit them to the Administrators by e-mail addressed to [curatoren@dsbbank.nl](mailto:curatoren@dsbbank.nl) or by ordinary letter addressed to Curatoren DSB Bank, t.a.v. afdeling Klachtenmanagement, Postbus 70, 1687 ZH Wognum, Netherlands.

5.8. Residual debt arrangements

The policy adopted by the Administrators regarding residual debt does not affect the right of customers to complain. Customers availing themselves of the residual debt arrangements agree to any compensation payable to them under the Scheme being deducted from the amount of any conditional or unconditional debt waiver.

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.

5.9. Debt restructuring arrangements

With the implementation of the Scheme, customers claiming to have payment problems are referred to the Scheme. Customers with serious financial problems, for whom the compensation provided is insufficient, will qualify for debt restructuring (or further alleviation), provided they were already seriously overindebted when they took out a loan and are now unable to meet their payments. The waiver of part of the principal in connection with debt restructuring 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.

At some point, all debt restructuring proposals will be assessed under the Scheme to ascertain whether customers might be entitled to a greater amount of compensation. If this is expected to be the case, the customer concerned will be contacted in writing with a request for the necessary information.

The customer will then receive a compensation proposal, net of any debt already waived. The customers concerned will be advised accordingly in due course.

5.10. Temporary payment arrangements

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

5.11. Payment collection

Even customers expecting to receive a compensation proposal or who have recently made an application under the Scheme are required to continue paying. It is the established policy of the Administrators that even customers with a complaint are required to continue paying their monthly instalments in full. The files of customers falling into arrears will be transferred to the DSB Bank Payment Collection Department, trading under the name Inspectrum. Various arrangements are in place for customers with serious payment problems (see Sections 5.8, 5.9 and 5.10 of this public report).

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

6.1. Financial statements

Annex 1 to this public report contains (i) a summary of the income and expenditure of DSB Bank from the date of the bankruptcy up to the end of March 2012 and (ii) a financial summary of the income and expenditure of DSB Bank during the first quarter of 2012.

6.2. Financial Report 2011

On 24 February 2012, the Administrators published the 2011 Financial Report on the websites [www.dsbbank.nl](http://www.dsbbank.nl) and [www.houthoff.com](http://www.houthoff.com).

6.3. 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 €347 million (position as at 31 March 2012: €373 million).

#### 6.4. Servicing

As stated in Section 6.3 of the ninth public report, the transition agreement between the Administrators and Quion signed on 29 June 2011 includes agreements covering the technically complex conversion and migration process. In the tenth public report, it was mentioned that the Administrators had concerns regarding the feasibility of the timetable. It has since been agreed with Quion that the date for completing the conversion and migration process should be put back from mid-2012 to the fourth quarter of 2012. The Administrators continue to monitor developments closely.

#### 6.5. Securitisation programmes

Regular reports containing the most important information relating to the underlying loan portfolios are prepared on behalf of the SPVs for the individual securitisation programmes. This information forms part of the regular reporting by the SPVs to their noteholders.

The Administrators also have regular meetings with the SPVs and provide information to the rating agencies and the noteholders in conference calls organised by the SPVs. For details of these contacts in the period March to September 2011, see the tenth public report.

Following the announcement of the Scheme, the Administrators also advised the SPVs regarding the impact of this Scheme on the securitisation programmes. In October 2011, the SPVs organised a conference call in which more than 110 noteholders participated. In this conference call, the SPVs advised the noteholders regarding the effects of the Scheme and answered questions from noteholders. Having taken extensive legal advice, the SPVs called formal meetings with noteholders on 24 January 2012 and 23 February 2012 in which they advised noteholders to refrain from challenging DSB Bank about the set-off of compensation payments under the Scheme against outstanding securitised loans. The noteholders of four programmes have given their agreement. The noteholders of one programme voted against but so far this has not resulted in any further action on the part of the SPV concerned.

On 19 January 2012, the Administrators wrote to the SPVs stating that they were prepared to make an advance against the SPVs' claim in connection with debt restructuring arrangements affecting securitised loans. The amount of this advance is €3.4 million, being the payout percentage to creditors of 19% applied to a total of debt restructuring arrangements up to the end of November 2011 amounting to €18.1 million. Four SPVs have indicated their acceptance of this offer.

On 27 April 2012, the Administrators will again be providing information to the noteholders in a conference call organised by the SPVs.

6.6. Lease contracts

DSB Bank is still party to 35 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.

6.7. 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.

6.8. Hedges

In the previous public report, it was stated that the Administrators were talking to the counterparties about the final statements of account submitted by them in connection with the hedge contracts they had cancelled.

In the period under review, the Administrators reached agreement with NIBC Bank N.V. (**NIBC**), one of the counterparties. Amongst other things, the agreement which has been reached means that NIBC has withdrawn its claim in the insolvency. The agreement also resulted in the Administrators taking over NIBC's position in the interest rate swap (front swap) contracted between NIBC and Monastery 2004, one of the securitisation SPVs. The rating agencies have been able to leave the rating of the bonds issued by Monastery 2004 unchanged, partly because the liabilities of the insolvent entity are guaranteed by Rabobank. The Administrators expect the front swap to produce a considerable positive cash flow for the insolvent entity. The interest rate risk assumed by the insolvent entity by taking over the front swap has been hedged by the Administrators by contracting several interest rate swaps.

With the other counterparties, the Administrators are still in talks concerning the final statements of account submitted by them in connection with the cancelled hedge contracts.

6.9. Interest rate policy

The policy on interest rates and penalties adopted by the Administrators can be found on the website [www.dsbbank.nl](http://www.dsbbank.nl).

## **7. Lawfulness**

### **7.1. Investigation into the causes of the bankruptcy**

In the period under review, the Administrators worked on the factual part of the report. A draft report was submitted to the various parties concerned who have accepted the protocol in mid-February 2012, giving them a month in which to make their comments known. The Administrators are currently busy processing these comments and completing the report with a summary and an assessment of the causes. The report is expected to be published on the morning of Tuesday, 12 June 2012.

Only when the report has been finalised will the Administrators draw conclusions, based on an analysis of the findings of their investigation, regarding the possible accountability of the existing and former executive/supervisory directors of DSB Bank and/or third parties.

### **7.2. Fraudulent action in respect of creditors**

This is the subject of further investigation.

## **8. Creditors / payables**

### **8.1. Creditors' Committee**

The Creditors' Committee is made up of Chapel 2003-I B.V., ING Bank N.V. and Mr E. Hulshof. In the period under review, lengthy meetings were held with the Committee to discuss the developments surrounding the settlement of the liquidation on 22 February and 25 April, with telephone and e-mail contacts taking place in the interim as necessary. Requests for advice on proposed decisions are made by the Administrators to the Creditors' Committee as and when required by law.

### **8.2. Assignment of allowed claims**

The Administrators have now been advised of the assignment of more than 100 allowed claims of unsecured creditors to various buyers. These transactions involve an amount of in excess of €7.4 million at face value.

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

The supervisory judge has called a second meeting of creditors pursuant to Section 178 of the Insolvency Act, to be held on 24 May 2012 commencing at 10:00 in the court building on Parnassusweg, Amsterdam. The purpose of this meeting is to allow duty-of-care claims and claims from other creditors to be validated. See also the previous public reports.

#### 8.4. Remaining claim validation proceedings against the Administrators

There are now 13 claim validation proceedings outstanding (brought by 13 creditors). These proceedings relate to claims contested by the Administrators amounting to a total of approximately €56 million. In relation to these claim validation proceedings, the Administrators have the following comments.

##### *Claims by De Nederlandsche Bank ("DNB")*

Pending the settlement of the remaining DGS-related cases, it was requested that judgement in the sole remaining claim validation case involving DNB be deferred. The case was then struck off ex officio by the case list judge but can be re-instigated at any time if necessary.

##### *Trade creditors*

The claim validation proceedings brought by trade creditors Bluecredit and UPC have been settled. A decision is due to be given in the remaining case brought by a trade creditor (Debet Card Services Europe B.V.) on 11 July 2012.

##### *Financial institutions*

A settlement has been reached with NIBC, bringing the related claim validation proceedings to a close. The claim validation proceedings brought by Société Générale were struck off ex officio by the court but can be re-instigated if necessary.

##### *Duty of care*

The two cases predating the insolvency and concerning claims from DSB Bank customers alleging dereliction of the duty of care on the part of DSB Bank are still not actually being pursued.

##### *Employees*

The case in which a former employee was claiming a bonus has been settled. The details of the settlement were laid down in a formal statement and the case was then closed. In the other case, an employee has lodged an appeal against the decision by the court which went against him.

##### *Subordinated deposit holders*

A number of claim validation proceedings relate to claims from holders of subordinated deposits. These creditors have associated themselves with the DSB Deposits Association (**VDD**). Their claims are seen by the VDD as test cases. A joint meeting in Chambers in these test cases was held on 16 February 2012. The judgements have been held over until 30 May 2012.

Judgement has also been sought in the other claim validation case brought by a subordinated deposit holder. This judgement has been held over until 6 June 2012.

8.5. Liabilities of the insolvent entity

In view of the position of the insolvent entity, the Administrators continue to pay amounts agreed by them as being owed by the insolvent entity as quickly as possible.

**9. Other**

9.1. Tax matters

See Section 9.1 of the ninth public report.

9.2. Netherlands Authority for the Financial Markets (AFM) and DNB

The Administrators have regular meetings with the AFM and also with DNB to discuss current issues.

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 websites [www.dsbbank.nl](http://www.dsbbank.nl) and [www.dsbcompensatie.nl](http://www.dsbcompensatie.nl). Customers can also e-mail questions to [curatoren@dsbbank.nl](mailto:curatoren@dsbbank.nl) or call the DSB Bank call centre on **088 372 30 00** (local call rate). The call centre is open from 08:30 to 17:30 on business days.

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) and PwC (accountancy, tax consultancy and IT-related services) as well as various other outside specialists.

The Administrators along with the legal and tax consultants of Houthoff Buruma have together devoted approximately 2,210 hours in the period 1 January 2012 to 31 March 2012 on the liquidation of DSB Bank. During the same period, PwC spent about 655 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 2012 and the first part of 2013. Residual activities are bound to take several more years beyond then, albeit becoming less intensive.

9.6. Plan of approach

In the next reporting period, too, 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 transfer of the servicing of the loan portfolio, the investigation into the causes of the bankruptcy, the ongoing recording and validation of creditors and the liquidation of the assets of DSB Bank. In addition, the Administrators will be paying particular attention to the proper implementation of the Scheme.

9.7. Publication of the next report

The next public report is expected to be published at the end of July 2012. The report into the causes of the bankruptcy is also expected to be published in mid-June 2012.

Wognum, 26 April 2012

R.J. Schimmelpenninck  
Administrator

B.F.M. Knüppe  
Administrator

Annexes:

Annex 1: Summary of the income and expenditure of DSB Bank from the date of the bankruptcy up to the end of March 2012 and of the income and expenditure during the first quarter of 2012.

Annex 2: Summary of the costs of the Scheme in the period up to 31 March 2012.