

## **1 INTRODUCTION**

### **1.1 Purpose, setup and reporting of the inquiry**

- 1.1.1 On 12 October 2009, at the request of the Dutch central bank (De Nederlandsche Bank hereafter ("**DNB**")), the District Court at Alkmaar (Amsterdam branch) placed DSB Bank under the Emergency Ruling pursuant to Section 3:160 of the Financial Supervision Act (Wft), simultaneously appointing two administrators. At the request of these administrators, the District Court declared DSB Bank insolvent on 19 October 2009, simultaneously lifting the emergency ruling.
- 1.1.2 At the time of the declaration of insolvency, DSB Bank had made approximately 150,000 loans to its customers. Additionally, DSB Bank has approximately 250,000 customers with a claim against the bank in respect of credit balances on current accounts, savings accounts, deposit accounts or subordinated deposit accounts. Where these creditors have not received any compensation under the Deposit Guarantee Scheme (DGS), they are creditors in the insolvency. The various banks participating in the DGS are also indirectly creditors in the insolvency in amounts equal to payments made to DSB Bank customers by DNB attributable to each bank. Other significant groups of creditors are counterparties to trades and existing and former customers with claims relating to possible dereliction of the duty of care.
- 1.1.3 The purpose of the report now before you is to present the circumstances leading up to the collapse of DSB Bank as accurately as possible. The Administrators will be discussing this report with the creditors' committee and the supervisory judge with a view to decisions regarding possible liability claims which they might be able to bring on behalf of DSB Bank or on behalf of the assembled creditors. The Administrators do not consider it their duty to investigate whether certain individual creditors or other stakeholders may be able to bring liability claims.
- 1.1.4 The Administrators read the report by the Committee of Inquiry into DSB Bank, published in The Hague on 23 June 2010 (Rapport Scheltema). This inquiry was carried out by an independent committee of inquiry chaired by Mr M. Scheltema, at the behest of the Minister of Finance. The terms of reference were set forth in a letter from the Minister dated 29 October 2009 and addressed to the Speaker of the Lower House of the Dutch Parliament.<sup>1</sup>
- 1.1.5 The Administrators allowed the DSB Bank Committee of Inquiry to examine all the information it wished to see at DSB Bank and to interview staff concerned. In its report, the Committee emphasises that in its assessment of what went wrong, it did not confine itself to the standard questions of liability under private law but went further, asking, '*could things have been done better?*' and '*what lessons could be drawn for the future?*'<sup>2</sup>. The Scheltema Report does, however, contain a great deal of information relevant to the inquiry conducted by the Administrators, especially with

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<sup>1</sup> The Scheltema Committee's terms of reference were subsequently expanded. See report Algemeen Overleg, *Kamerstukken II 2009/10*, 31 371, nr. 285 (General Proceedings, *Dutch Parliamentary Records II 2009/10*, 31 371, no. 285)

<sup>2</sup> Scheltema Report, p. 9

respect to information which the Committee was able to obtain from DNB and the AFM (Netherlands Authority for the Financial Markets) to which the Administrators did not have access.

- 1.1.6 In conducting their inquiry, the Administrators relied primarily on sources available within DSB Bank and on the interviews they themselves held. The Administrators perused such things as the minutes of meetings of the Executive Board and Supervisory Board, the management letters from the auditors, correspondence with regulators and many other documents in written and electronic form. The Administrators also examined the DSB Bank business against the background of the developments in the sector.
- 1.1.7 The Administrators began their initial preparations for the inquiry in the third quarter of 2010, storing the information they had gathered from the DSB Bank offices in a data room. The Administrators and their team then carried out an initial investigation of the facts, which resulted in various scenarios and timelines. In the autumn of 2010, the Administrators reached agreement with all parties concerned, except for the Executive Board members most recently in office, Scheringa, Van Goor, Linschoten, Buwalda, and except for E&Y, on a protocol establishing the agreed approach to the present inquiry. The protocol covered such things as access to the data room, status of reports and working documents, progress regarding formal interviews with those concerned and the right to comment on the factual part of the Administrators' report. The protocol has been included as Annex 3.
- 1.1.8 The Administrators then conducted interviews with the persons listed in Annex 4. Signed, written minutes of each of these interviews were kept. The Administrators also spoke to the four most recent Executive Board members, having first reached separate agreements with them on the scope of the interviews. These interviews, too, were duly minuted and the minutes signed. The Administrators interviewed E&Y separately as well and, again, signed minutes of the interview were kept.
- 1.1.9 It is the Administrators' impression that all parties concerned lent their cooperation to the inquiry. Most people spent a considerable amount of time answering the Administrators' questions. The two regulatory authorities, DNB and the AFM, also provided answers to questions addressed to them by the Administrators. E&Y, however, were unwilling to go into detail concerning the manner in which the auditing of the financial statements had been conducted and refused to allow the audit files to be scrutinised. The auditors were also not prepared to say what DSB Bank documents they had examined in connection with their audit activities when asked for details by the Administrators.
- 1.1.10 In February 2012, the Administrators sent out draft copies of the factual part of the draft report to those individuals who had been formally interviewed by them, inviting their comments, including their confirmation of involvement. This did not include Scheringa, Van Goor, Linschoten and Buwalda, the four most recent Executive Board Members, who declined the opportunity. After processing the comments received and after further considerations, the Administrators finalised the report now before you, adding a summary and conclusions.

1.1.11 Published simultaneously with this report is also the report of the Administrators' inquiry concerning DSB Beheer and the causes of the failure of this company. Since DSB Beheer was owner (indirectly) of DSB Bank and there were numerous relationships between DSB Bank, DSB Beheer and subsidiaries, the two reports should be read in conjunction with each other.

## **1.2 Content and format of the report**

1.2.1 Section 2 contains a chronological description of the most important facts relevant to the present inquiry. In the subsequent sections, the Administrators consider the events during the period 2005–2009, topic by topic, expanding on parts of the chronological account. Section 10 contains the summary and conclusions.

## **1.3 Concluding remarks and disclaimer**

1.3.1 As the Administrators pursue their investigation, it may be found that parts of this report should be corrected, revised or supplemented. The Administrators reserve all rights in this respect.

1.3.2 No rights against the insolvent entity may be derived from this report.

1.3.3 The Administrators hold the copyright to this report.

Amsterdam/Wognum 19 June 2012



R.J. Schimmelpenninck, Administrator



B.F.M. Administrator