

Investigation by administrators of the causes of the DSB insolvencies:

DSB Bank N.V.: eleven findings

DSB Beheer B.V.: four findings

Amsterdam, 19 June 2012 – The administrators of DSB Bank N.V. and DSB Beheer B.V. have investigated the circumstances leading to the collapse of DSB Bank and DSB Beheer. Two separate investigations were conducted but, because DSB Beheer was (indirectly) the owner of DSB Bank and there were many links between DSB Bank, DSB Beheer and subsidiaries, the reports on the two investigations should be considered together.

The administrators of DSB Bank arrived at eleven findings, five of which can be regarded as causes of the collapse. In the case of DSB Beheer, one of the administrators' four findings relates to an important cause of the collapse.

In regard to both investigations, the administrators have declined to express a view as to whether certain individuals or institutions can be held liable for all or part of the loss resulting from the insolvencies. That will require further analysis of the reports and the available legal options.

The administrators of DSB Bank, R.J. Schimmelpenninck and B.F.M. Knüppe, formulated eleven findings on completion of their investigation, which culminated in a report of 421 pages (excluding annexes), based *inter alia* on the available sources within DSB Bank and interviews with those concerned:

1. DSB Bank was not ready to become a large bank in 2005 and the Nederlandsche Bank (DNB) should not have issued the necessary licences without imposing strict conditions.
2. The issue of the banking licence in December 2005 greatly increased Dirk Scheringa's influence within DSB Bank, at a time when governance was defective and there were weaknesses in DSB Bank's organisation. Scheringa's conduct, deficient corporate governance and DNB's failure to take effective action were important causes of the insolvency.
3. Cases of dereliction of DSB Bank's duty of care, which dated back to before 2005 and occurred with increasing frequency thereafter, were of a structural nature and DSB Bank never took the issue sufficiently seriously. This was a major cause of the collapse. The administrators had already come to this conclusion, before reaching an agreement with stakeholder organisations concerning duty-of-care complaints in September 2011. DNB failed to take sufficient account of the risk represented by the duty-of-care problems in the performance of its regulatory duties.
4. Changes in the regulations, customer complaints and public criticism of DSB Bank's products and services made it vital to adopt a new business model with different products and services. The failure to take action to implement a new business model was an important cause of the collapse.

5. The loan relationship and the close links between DSB Bank and DSB Beheer were an important cause of the failure of DSB Bank. DSB Beheer found itself in serious cash flow difficulties when it could no longer obtain dividends or loans from DSB Bank.
6. Although the treatment of certain items in the 2008 financial statements was probably permissible, there is doubt as to whether these financial statements as a whole presented a true and fair view. That in itself was not an important cause of the collapse, but it does call into question the actions of *inter alia* the DSB Bank Executive Board.
7. DSB Bank sailed too close to the wind as far as solvency was concerned, by presenting the maximum possible profit and taking unwarranted risks. This was a major cause of the collapse.
8. The credit crunch had both positive and negative impacts for DSB Bank. According to the administrators, the crisis cannot be said to have been a major cause of the collapse, but it did make DSB Bank extra vulnerable.
9. The negative publicity and the run on DSB Bank were not a cause of the collapse.
10. The haircut imposed by DNB, which meant that DSB Bank could borrow far less from the European Central Bank (€1 billion instead of €1.8 billion), was not a cause of the insolvency. According to the administrators, the haircut was a response to the uncertain situation in which DSB Bank found itself after 5 October 2009, but the haircut does raise questions.
11. Finding an alternative to going into insolvency proceedings was seriously impeded by the confusion surrounding DSB Beheer's financial situation and the volume and financial implications of the duty-of-care risks, against the background of the time pressure due to the bad publicity and the run on the bank.

Administrator Rutger Schimmelpenninck: 'All in all, the picture emerges of a bank which grew too fast, whose organisation was weak, whose governance was deficient and over which supervision was inadequate. And a bank with a culture over which third parties were able to exercise little influence in practice.'

The administrators of DSB Beheer, J.L.M. Groenewegen and R.J. Schimmelpenninck, formulated four findings on completion of their investigation, which culminated in a report of 115 pages (excluding annexes), based *inter alia* on the available sources within DSB Beheer and interviews with those concerned:

1. Implementation of the corporate governance rules and principles was seriously deficient at DSB Beheer, allowing Dirk Scheringa to do as he pleased. The administrators regard this non-compliance with the corporate governance rules as a significant aspect – but not in itself a separate cause – of the collapse of DSB Beheer.
2. DSB Beheer failed adequately to recognise the risks inherent in its dependence and that of its non-financial associates on cash flows from DSB Bank and DSB Verzekeringen. This was partly due to the structure of the DSB Group, in which Dirk Scheringa decided the policy.

When DSB Bank and DSB Verzekeringen posted worse results, DSB Beheer was unwilling to scale back its investment ambitions and continued to invest in loss-

making activities. DSB Beheer realised too late that substantial disinvestments were necessary if it was to fulfil its financial obligations. As sole director and (indirect) shareholder, Scheringa played a decisive role in this process. These circumstances, considered together, were an important cause of the collapse.

3. The administrators found that, when the auditors' report was issued on the 2007 financial statements (5 December 2008) and at the time of the report on the 2007 audit (10 December 2008), both the Executive Board of DSB Beheer and the auditors Ernst & Young were aware that, without additional measures, DSB Beheer was not sufficiently liquid to fulfil the guaranteed short-term obligations of the AZ football club, DSB Stadion and DS Art. The administrators doubt whether the assumption that DSB Beheer could nevertheless meet its obligations was correct. If it transpires that this assumption was incorrect, it would not be a major cause of the collapse of DSB Beheer, but it does raise questions regarding the conduct of DSB Beheer's Executive Board and Supervisory Board. In that context, Ernst & Young's position as DSB Beheer's auditors requires further analysis and study.
4. DSB Beheer's financial situation in September 2009 was such that its collapse in the short term was virtually inevitable. The fact of DSB Bank being declared insolvent was not a major cause of DSB Beheer's collapse.

Administrator Marcel Groenewegen: 'We had no choice but to find that DSB Beheer had not been professionally managed. Many obligations in areas which Dirk Scheringa considered important – such as art and sport – were undertaken without realistic financial planning, even when it became clear that DSB Beheer could no longer rely on obtaining the required funding from DSB Bank and the group's own insurers.'

The reports of the administrators on the causes of the collapse of DSB Bank and DSB Beheer can be ordered from bookshops:

Rapport DSB Bank (Report on DSB Bank): ISBN 9789080801400

Bijlagen bij rapport DSB Bank (Annexes to report on DSB Bank): ISBN 9789080801431

Rapport DSB Beheer en bijlagen (Report on DSB Beheer, with annexes): ISBN 9789080801448