

## INSOLVENCY REPORT

Insolvency Report no. 11 by the Administrators of  
**DSB Bank N.V.**

31 January 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 30 November 2011, the supervisory judge recommended a second interim distribution of 4% on the allowed unsecured claims. The distribution list was made open to inspection by anyone free of charge at the office of the clerk to the court in Amsterdam from 5 December 2011 onwards. Actual payments were made, commencing on 20 December 2011. A total of almost €146 million has been paid out.
- It was also decided to pay advances (without interest) on the distributions to be made to a number of unsecured creditors with claims of a known amount, pending validation.
- On 19 September 2011, the Administrators reached agreement with two stakeholder organisations and five legal assistance organisations - represented by a lawyer appointed by them - (**Stakeholder Organisations**), concerning a compensation scheme (**Scheme**). This Scheme covers many existing and former customers of DSB Bank with single-premium policies, investment plans, claims of excessive lending and other duty-of-care complaints. For more information on the Scheme, see the website [www.dsbcompensatie.nl](http://www.dsbcompensatie.nl), which is being operated jointly by the Administrators and the Stakeholder Organisations.
- The Administrators also reached agreements with all the insurance companies concerned with customers of DSB Bank, regarding cooperation and the financial contributions to be made by these insurance companies to the Scheme.
- As at 19 September 2011, a total of almost 10,000 complaints had been submitted to the DSB Bank Complaints Management Department, including those from customers affiliated to the Stakeholder Organisations. Almost all of these customers have now received a compensation proposal. By far the majority of customers have accepted the compensation offered.
- Other customers wishing to qualify for the Scheme can submit their claims via the website [www.dsbcompensatie.nl](http://www.dsbcompensatie.nl). To date, the names of more than 9,400 customers who had not previously submitted a complaint have been registered. These customers will receive compensation proposals in the next few weeks.
- On 8 December 2011, Stichting Hypotheekleed (**Hypotheekleed**), citing Section 69 of the Insolvency Act, requested the supervisory judge to order the Administrators to implement the Scheme in a certain manner. The supervisory judge rejected Hypotheekleed's request on 27 December 2011.
- 2 November 2011, the court in Amsterdam throughout the collective claim from Hypotheekleed concerning payment of out-of-court expenses.

- On 12th of February 2009, DSB Ficoholding N.V. (**DSB Ficoholding**) decided to pay out an interim dividend of €1.7 million per month in respect of 2009, provided DSB Bank's net profit for 2009 permitted. Over the period February to May 2009, DSB Bank paid out a total of €11.3 million, including an extra distribution of €4.5 million in March 2009. The Administrators take the view that DSB Ficoholding should repay the amount distributed to the insolvent entity on grounds of non-entitlement.
- Following the preliminary meeting of creditors and the first formal meeting of creditors, there are still 20 contested claims (from 17 creditors), totalling approximately €71 million, in respect of which claim validation proceedings are in progress.
- DSB Bank currently has approximately 131,000 loans to customers outstanding, totalling an amount of approximately €5.5 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 collapse and the end of December 2011, DSB Bank received a total of approximately €2 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 €440 million (position as at 31 December 2011: €470 million).
- Under the debt restructuring arrangements which have been in place since May 2010, 1,029 restructuring requests have been acknowledged by the bank and, of these, 1,024 customers have received a debt restructuring proposal. By far the majority of the responses so far received have been positive; 979 debt restructuring proposals have been signed and returned.

**Prospects for creditors:**

An initial distribution was made at the end of June 2011, details of which can be found in the ninth and tenth public reports.

On 30 November 2011, the supervisory judge recommended a second interim distribution of 4% on the allowed unsecured claims of creditors. The distribution list was made open to inspection by anyone free of charge at the office of the clerk to the court in Amsterdam from 5 December 2011 onwards. No objections to the distribution list have been registered.

Actual payments were made, commencing on 20 December 2011. A total of almost €146 million has been paid out. In connection with the second distribution. A total of 19% has now been paid out on the allowed unsecured claims.

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 consult with the supervisory judge regarding any further distribution.

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	: 1 November 2011 to 31 January 2012

### **Introductory remarks**

This is the eleventh public insolvency report by the Administrators. It covers the period from 1 November 2011 to date (31 January 2012) and contains limited financial information relating to the period ending 31 December 2011. It should be read in conjunction with the previously published reports. All the reports, together with the Financial Reports for the years 2009 and 2010 can be found on the websites [www.dsbbank.nl](http://www.dsbbank.nl) and [www.houthoff.com](http://www.houthoff.com). The Financial Report for 2011 will be published on the websites in the course of February 2012.

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.

This is an unofficial English translation of the eleventh report. 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 various other law firms and advisers.

CONTENTS:

0. GENERAL INFORMATION FOR CREDITORS OF DSB BANK

1. INTRODUCTION

2. CURRENT SITUATION

3. STAFF

4. ASSETS

5. DEBTORS / RECEIVABLES

6. BANK FINANCES / COLLATERAL SECURITY HELD

7. LAWFULNESS

8. CREDITORS / PAYABLES

9. MISCELLANEOUS

## 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 CBp ruled that the subordinated deposits offered by DSB Bank were in fact covered by the Deposit Guarantee Scheme (**DGS**). Allowing this ruling by the CBp, DNB opened the DGS exclusively to DSB customers with subordinated deposits. For further details, the Administrators make reference to the previous public reports.

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 a number of test cases brought by the VDD. See Section 8.4 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 8.3 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 that have not yet submitted a complaint can still do so via the website [www.dsbcompensatie.nl](http://www.dsbcompensatie.nl) –see also Section 5.3 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.

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 most recent reporting period

- 1.1. For the principal activities of the Administrators in the most 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 current account positions between the entities. Meetings are also held periodically with 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.
- 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.
- 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.
- 1.5. In the period under review, the Administrators continued with the usual investigations into the causes of the collapse. The Administrators refer to Section 7.5 of this public report.
- 1.6. 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 also 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, 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 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 proceedings, statements of defence have been made on behalf of DSB Leven and/or DSB Schade; the next stage is the personal appearance of the parties and consideration of the cases following the statements of defence. One of these proceedings is to be dropped at the request of the parties, now that a settlement has been reached.

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 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.

In the fourth case, an interim ruling was given on 11 January 2012. As in the other cases, the counterclaim against the Administrators has been ruled inadmissible (pursuant to Section 26 of the Insolvency Act (**FW**)). In passing judgement, the court did, however, take into account the alleged dereliction of duty of care as defence but the court ruled, in the case concerned, that the loan agreements entered into were not complex products nor did the loan agreements in question qualify as complex in combination with the related single-premium policies. With regard to the single-premium policies, the court ruled that DSB Bank was not guilty of dereliction of duty in selling single-premium policies. In relation to the endowment policies taken out by claimants, the court considered that – having particular regard to the in some cases advanced age of customers at the time of buying the product – DSB Bank did fail in its duty to provide proper information and warnings. The court has given parties the opportunity to express their views concerning the amount of compensation. For details of said judgements, reference is made to the website [www.dsbcompensatie.nl](http://www.dsbcompensatie.nl).

The fifth case was dropped following 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 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 reached a conclusion. A meeting in chambers will be held on 8 May 2012.

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 (chaired by P. Lakeman) 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 which DSB Bank might be found to be liable for vis-à-vis its customers. In these proceedings, the Administrators argued, among other things, that deciding the amount of any out-of-court expenses to be awarded - where justifiable - should be on an ad hoc basis, taking account of the collective nature of the solutions being sought to the problems of duty-of-care complaints.

The court passed judgement on 2 November 2011, upholding the Administrators' arguments, rejecting Hypotheekleed's claims in their entirety and awarding costs against Hypotheekleed. The court considered that the question of whether it was possible to allocate out-of-court expenses could only be answered when activities had been performed. Only then would it be possible to assess on an ad hoc basis whether costs had actually been incurred and, if so, whether they were eligible for compensation. For the full details of this judgement, reference is made to the website [www.rechtspraak.nl](http://www.rechtspraak.nl) (LJN: BU3296).

#### 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 previous public reports.

*Premises rented from third parties*

With respect to the premises situated at Dick Ketlaan 1-15/19, Dick Ketlaan 20 and Dick Ketlaan 21 in Wognum, DSB Bank has exercised its right to renew the lease up to 31 December 2012. The relevant agreements are contained in various addendums.

With respect to the premises at Dick Ketlaan 1-15/19, DSB Bank is in talks with the municipal authority regarding a further extension of the lease.

In the period under review, a sales contract was signed between DSB Bank as a vendor or and Jobcom B.V. as purchaser for the building situated at Ecu 21 and 21a, Emmeloord. Article 4.1 of the sales contract makes provision for DSB Bank to continue using, free of charge, the second floor of this building as well as 10 parking spaces up to 31 December 2012. Jobcom B.V. Has also made DSB Bank an irrevocable offer to enter into a lease for this floor of the building plus 10 parking spaces with effect from 1 January 2013. DSB Bank has until 1 July 2012 to indicate whether it wishes to take up this lease.

#### *Premises leased to third parties*

DSB Bank intends to lease part of the premises situated at J. Duikerweg 15b, Heerhugowaard, to a group company of Quion in connection with the agreements entered into by DSB Bank with various Quion companies relating to the outsourcing of the servicing of the consumer credit and mortgage portfolios.

### **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 217 employees (172.20 full-time equivalents) and 26 staff (20.03 FTEs) are employed by DSB Insurance, a wholly-owned subsidiary of DSB Bank. The insolvent entity also uses the services of more than 60 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 recently notified the majority of those staff currently still employed by DSB Bank that they will be able to remain in service until at least the fourth quarter of 2012. Approximately 15 employees have been notified that their services will continue to be necessary into 2013. 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 activities within the insolvent entity in connection with the servicing of the loan portfolio and the implementation of the Scheme. 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

All the surplus office furniture and PCs have been auctioned off. A small proportion of the remaining equipment (mainly printers) has not yet been sold. Attempts will be made to sell these remaining assets privately.

### 4.5. Sale of German loan portfolio

See Section 4.5 of the tenth public report.

### 4.6. Receivable from DSB Ficoholding

On 12th of February 2009, DSB Ficoholding, as shareholders DSB Bank, decided to pay out an interim dividend of €1.7 million per month in respect of 2009, provided DSB Bank's net profit for 2009 permitted. Over the period February to May 2009, DSB Bank paid out a total of €11.3 million, including an extra distribution of €4.5 million in March 2009. There is no shareholder resolution authorising this extra distribution. Separate dividend declarations are also wanting for the monthly payouts of €1.7 million. Moreover, DSB Bank did not file any interim balance sheets, meaning that the interim distributions were made without satisfying the legal requirements. The Administrators have advised DSB Ficoholding that it was not legally entitled to receive the €11.3 million distribution because it was not made on the basis of a resolution declaring a dividend and any decision to that effect did not satisfy the legal requirements. This accordingly gives rise to a receivable from DSB Ficoholding amounting to €11.3 million.

#### 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, DSB Schade and HWL under the terms of a service level agreement (SLA).

##### *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 note 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. This company will be wound up in the near future.

##### *Paul.nl B.V.*

See the first public report.

##### *DSB Belgium N.V.*

See the fifth public report. The Administrators do not currently see sufficient 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. The intention is for the servicing activities shortly to be contracted out to third-parties, with the object of assuring continuity in the servicing of the 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 collapse, reference is made to Annex 2 to the first public report. An update is provided by the 2010 Financial Report, which was appended to the ninth public report as Annex 2.

#### 5.2. Global Corporate Jets

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

The attempts by Global Corporate Jets to sell the aircraft have been unsuccessful. Currently, the Administrators themselves are in talks with several interested parties concerning the sale of the aircraft. It is hoped that the sale of the aircraft can be completed before the end of the next reporting period.

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

At the end of 2008, Landsbanki, chiefly active in the Netherlands under the name Icesave, found itself in serious financial difficulties. In connection with the implementation of the Dutch and the Icelandic deposit guarantee schemes, DNB paid out approximately €1.6 billion to account holders. Under the terms of the DGS, DNB recovered this amount proportionately from the Dutch banks.

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.

#### 5.4. The Scheme

##### *Introduction*

The negotiations between the Administrators and the Stakeholder Organisations reached agreement on a Scheme on 19 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 contents of the Heads of Agreement (including annexes) can be found on [www.dsbcompensatie.nl](http://www.dsbcompensatie.nl).

This website operated jointly by the Administrators and the Stakeholder Organisations is clearly meeting and need. Up to the end of last week, the website had recorded almost 41,000 individual visitors.

#### *Implementation of the Scheme*

As a website reveals, the Administrators have now succeeded in obtaining a decision from the Dutch central credit records agency BKR and the Dutch Tax Administration as to the way in which, through application of the Scheme, certain BKR ratings can be adjusted and any compensation paid out will be treated for tax purposes.

An addendum to the Heads of Agreement detailing the compensation payable in respect of excessive lending will shortly be signed by the Administrators and the Stakeholder Organisations and then published on the website.

The rules governing the Disputes Committee (provision 2.2.7. et seq. of the Heads of Agreement) and the Special Circumstances Committee (provision 2.7.10. et seq.) together with the composition of these committees are expected to be published on the website in February 2012.

#### *Initial experience with the operational rollout of the Scheme*

As agreed in the Heads of Agreement, the Administrators began by drawing up and sending out compensation proposals for Phase 1 (compensation for insurance policies and securities lending products) to customers having lodged a complaint either with DSB Bank or with one of the Stakeholder Organisations by 19 September 2011. On 27 January 2012, almost 9,000 of these proposals had been sent out. The roughly 1,000 remaining proposals will be sent out in the next few weeks. The remaining proposals, incidentally, generally relate to customers with payment difficulties or with very complex cases.

The response has been good. By 27 January 2012, for instance, a total of 4,140 proposals had been signed and returned to DSB Bank and almost another 2,000 customers had indicated their intention of first waiting for the compensation proposal for Phase 2 (compensation for excessive lending) before accepting. Only a few tens of customers have rejected the proposal outright.

Commencing in February 2012, qualifying customers in the first group will receive letters telling them how they can apply for a compensation proposal for Phase 2.

In the period 19 September 2011 to 27 January 2012, approximately 9,400 customers who have not already filed a complaint with DSB Bank also applied for the Scheme and this number is growing by between 120 and 200 applications a week. Commencing in February 2012, these customers will receive letters telling them how to apply simultaneously for Phases 1 a 2 of the Scheme.

#### *Request from Hypotheekleed to the supervisory judge*

On 8 December 2011, Stichting Hypotheekleed (Hypotheekleed), citing Section 69 of the Insolvency Act, requested the supervisory judge – basically – 'to intervene' in the way in which the Administrators were implementing the Scheme. For details of this request, see [www.hypotheekleed.nl](http://www.hypotheekleed.nl). In a decision handed down on 27 December 2011 (see **Annex 2**), the supervisory judge rejected the request. Hypotheekleed has not appealed the decision.

### *Legal assistance organisations*

The Administrators have learnt that a Foundation looking after the interests of customers with legal assistance insurance will be set up in February 2012 (see E. Of the introduction to the Heads of Agreement). The intention is that this Foundation should then become party to the Heads of Agreement, as provided for in clauses 1.1.2. and 1.1.4. Of the Heads of Agreement.

### *Costs of the Scheme*

The total costs to the DSB Bank insolvent entity depend in part on the personal financial situations of the individual customers and the number of customers applying for inclusion in the Scheme but will run into several hundreds of millions of euros. The Administrators estimate that in the case of at least two-thirds of the customers qualifying for the Scheme, it will be possible to offset the amount of compensation due to them against the amount owed by them to DSB Bank. The remaining customers no longer owe DSB Bank any money and will therefore have to submit the amount of compensation as an unsecured claim in the liquidation of DSB Bank.

### *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 further duty-of-care complaints will be entertained.

### *Insurers*

Where necessary, the affected insurers are involved in the Scheme, looking after such things as the way in which the contractual termination of the single-premium policies will be settled. Agreements have also been reached on the explanation of certain policy terms and conditions for the benefit of customers. The insurers will also be making a financial contribution to the Scheme by either waiving claims for return commission in the liquidation of DSB Bank altogether or claiming smaller amounts.

In the third quarter of 2011, the Administrators and the management of DSB Leven and DSB Schade met to discuss the Scheme. For HWL, it was agreed that DSB Leven and DSB Bank would enable HWL to improve the rights of policyholders to reflect the lower cost deductions in respect of investment plans.

In connection with Article 2.4.3 of the Heads of Agreement, DSB Bank has made a loan facility available to Ficoholding for a maximum amount of €28 million at an interest rate of EURIBOR plus 4% p.a., repayable in full on 1 October 2021. On 30 September 2011, DSB Ficoholding drew down an amount of €13 million under this facility. In accordance with the terms of the facility, DSB Ficoholding then used these funds for payment of share premium on the shares in DSB Leven which it holds and DSB Leven in turn used the money for payment of share premium on the ordinary shares of HWL held by the company.

#### 5.5. Settlement of other complaints

The complaints submitted to the DSB Bank or to the Administrators mainly relate to the alleged dereliction of the duty of care on the part of DSB Bank. The Scheme is applicable to these complaints.

A small proportion of the complaints relates to matters not concerned with the duty of care.

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

See the tenth public report.

#### 5.7. 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. Applications under the Compensation Scheme and new complaints

Customers wishing to qualify for the Scheme can complete an application form online at [www.dsbcompensatie.nl](http://www.dsbcompensatie.nl) or request an application form by calling +31 (0)88 372 66 66. Customers wishing to file another 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 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.

#### 5.10. 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.

Under the debt restructuring arrangements which have been in place since May 2010, more than 1,029 debt restructuring applications have been allowed and 1,024 customers have already received a debt restructuring proposal. By far the majority have been accepted, with 979 proposals signed in agreement.

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. This is expected to be the case with respect to a very limited number of claims. The customers concerned will be advised accordingly in due course.

#### 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 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. If a customer falls into arrears, the debt collection agency Incassobureau Inspectrum will be called in. Various arrangements are in place for customers 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

Annex 1 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 September 2011 and (ii) a financial summary of the income and expenditure of the insolvent DSB Bank during the fourth quarter of 2011.

#### 6.2. Financial Report 2011

The Administrators plan to post the 2011 Financial Report on the websites [www.dsbbank.nl](http://www.dsbbank.nl) and [www.houthoff.com](http://www.houthoff.com) at the end of February 2012.

### 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 €440 million (position as at 31 December 2011: €470 million). The now revised special short-term loan facility can also be used to make interim distributions to the allowed unsecured creditors.

### 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 the completion of the conversion and migration process should be put back from mid-2012 to 15 September 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 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 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. On 27 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 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 voting results are not yet known, as there was not a quorum at the meetings of a number of SPVs.

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.

### 6.6. Lease contracts

DSB Bank is still party to 39 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. Retention of title, rights of recovery and possessory liens

To date, no parties 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.

#### 6.9. Hedges

The Administrators are in negotiations with the swap counterparties about the claims they have submitted relating to cancel the hedging contracts.

#### 6.10. 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. Duty to keep proper accounts

See the tenth public report.

#### 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. Investigation into the causes of the collapse

See also the previous public reports.

In the period under review, the Administrators worked on the factual part of the report. When the draft report is ready, which is expected to be at the beginning of February 2012, it will be presented to the various parties that have accepted the protocol for them to comment, for which they have a period of one month. These comments will then be processed and the Administrators will append to the report a summary and an evaluation of the causes of the collapse. The report is not expected to be published any earlier than the end of April 2012.

Based on an analysis of the findings of their investigation, 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 creditors' committee is made up of Chapel 2003-I B.V., ING Bank N.V. and Mr E. Hulshof. In the recent reporting period, two full meetings of the Administrators and the creditors' committee were held, one in November 2011 and one in January 2012. At these meetings, the developments surrounding the settlement of the liquidation were discussed, 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 46 allowed claims of unsecured creditors to various buyers. These transactions involve an amount of almost €3.6 million at face value.

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

Following the preliminary meeting of creditors and the first formal meeting of creditors held on 19 May 2011, there will be one or more separate creditors' meetings as provided by Section 178 of the Insolvency Act (FW) convened by the supervisory judge in order to allow the claims of customers with claims relating to duty of care and other creditors. See also the previous public reports.

### 8.4. Remaining claim validation proceedings

Following the meetings held on 10 December 2010 and 19 May 2011, there are now remain 20 cases to be decided validation proceedings (concerning 17 creditors). These proceedings relate to claims contested by the Administrators amounting to a total of approximately €71 million. 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. Following talks with the Administrators, DNB has decided to withdraw one of these claims. This case has been removed from the cause list. The other case remains on the list.

#### *Business creditors*

A number of claim validation proceedings relate to claims from DSB Bank business creditors. See also Section 8.3 of the ninth public report. In three of these proceedings, meetings in chambers will be held in the next few months.

#### *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 Dome 2006 and Monastery 2004. Both proceedings have been suspended in connection with composition negotiations.

#### *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 continues to be that obtaining at the time of the declaration of insolvency. No material progress is being made with these cases for the present.

#### *Employees*

Two claim validation proceedings have also been brought relating to claims from former 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 this case, a meeting in chambers will be held on 8 February 2012.

In the other case, the former employee claims that the interest he is paying on a mortgage loan is too high. This claim has been rejected by the court in Amsterdam. The employee concerned has appealed the court's decision.

#### *Skaters*

Two claim validation proceedings relate to claims from skaters who were formerly part of the DSB skating team. An amicable arrangement has been reached with the skaters which has been formalised by decisions given in claim validation proceedings.

#### *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. These test cases will be considered jointly in a meeting in chambers.

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. There has already been a meeting in chambers to consider this case. The court will be asked to pass judgement in this case shortly.

#### *Interest*

The court has now ruled in claim validation proceedings relating to claims concerning interest since the date of the collapse and the claims have either been validated or withdrawn by the creditors.

### 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. **Miscellaneous**

### 9.1. Tax matters

See Section 9.1 of the ninth public report.

### 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 websites [www.dsbbank.nl](http://www.dsbbank.nl) and [www.dsbcompensatie.nl](http://www.dsbcompensatie.nl). Customers can also request information by e-mailing [curatoren@dsbbank.nl](mailto:curatoren@dsbbank.nl) or telephoning 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) 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 4,848.7 hours in the period 1 October 2011 to 31 December 2011 on the liquidation of DSB Bank. During the same period, PwC spent 1,338.2 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. Residual activities beyond 2012 are bound to take several more years, 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 continuation and servicing of the loan portfolio, the investigation into the causes of the collapse, 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. Filing of the next report

The Administrators plan to post the 2011 Financial Report on the websites [www.dsbbank.nl](http://www.dsbbank.nl) and [www.houthoff.com](http://www.houthoff.com) at the end of February 2012.

The next public report is expected to be published at the end of April 2012.

Wognum, 31 January 2012

R.J. Schimmelpenninck

Administrator

B.F.M. Knüppe

Administrator

Annexes:

Annex 1:

Summary of the income and expenditure of the insolvent DSB Bank from the date of the collapse up to the end of December 2011 and of the income and expenditure during the fourth quarter of 2011.

Annex 2:

Decision of the supervisory judge in the liquidation of DSB Bank given on 27 December 2011 in response to the request from Hypotheekleed citing Section 69 of the Insolvency Act.