

# Mortgage Bank Act

*April 2004*

Mortgage Pfandbrief Net Present Value Regulation

*December 2003*



Verband deutscher  
Hypothekenbanken

Association of German Mortgage Banks

# MORTGAGE BANK ACT (HBG)

of July 13, 1899 (RGBl. 1899 I 375-391) in the version of the announcement of September 9, 1998 (BGBl. 1998 I 2675-2681)

(BGBl. III 7628-1)

## Amendments to the Act

Cons. no.	Amending Act	Date	Source ref.	Amended articles	Type of amendment
1	Law establishing an integrated financial services supervision (Chapter 8)	22.04.2002	BGBl. 2002 I 1310-1337 (1331)	§§ 3, 35 par. 2 sent. 1, 39a	altered
2	Law on the further development of Germany as a financial location (Fourth Financial Market Promotion Act) (Chapter 11)	21.06.2002	BGBl. 2002 I 2010-2072 (2059-2061)	§ 5 par. 1 no. 1 half-sentences 1 and 2, no. 2a, no. 2b, par. 2, par. 3 no. 3 letter b; § 6 par. 6; § 7 par. 1; § 22 par. 1 sent. 1; § 28 par. 1 no. 1 letter a; § 30 par. 1, par. 2 sent. 1; § 31 par. 1, par. 2 sent. 1; § 32 par. 2; § 34a sent. 1; § 37 par. 2 no. 1; § 38 par. 2; § 41 sent. 1; § 46 par. 2 sent. 1  § 5 par. 1 no. 4a, no. 5a to 5c, par. 3 no. 1a; § 6 par. 1 sent. 2, par. 7; § 22 par. 1 sent. 2; § 30 par. 2 sent. 2, par. 4 sent. 3 and 4; § 35 par. 2a; § 40 par. 3	altered  altered
3	Law on the execution of the Second Protocol of June 19, 1997 to the Convention on the protection of the European Communities' financial interests, of the Joint Action on corruption in the private sector of December 22, 1998 and of the Council's Framework Decision of May 29, 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro (Chapter 3, paragraph 1)	22.08.2002	BGBl. 2002 I 3387-3389 (3388)	§ 39	deleted
4	Law for the Implementation of Directive 2002/47/EC of June 6, 2002 on Financial Collateral Arrangements and for the Amendments to the Mortgage Bank Act and other Acts (Chapter 8)	05.04.2004	BGBl. 2004 I 502-513 (504-507)	§§ 6 par. 1 sent. 2; 22 par. 1 p. 1, par. 2; 31 par. 2 p. 1; 35; 35a; 36; 41 p. 1  §§ 6 par. 1 p. 3; 22 par. 2; 35a to 35g	altered  altered

### **§ 1 (Definition of "mortgage bank" and core operations)**

Mortgage banks are credit institutions governed by private law whose business consists in:

1. granting loans on domestic properties and issuing bonds (Mortgage Pfandbriefe – "Hypothekendarlehen") on the basis of the mortgages acquired;
2. granting loans to domestic corporations and institutions governed by public law or against the full guarantee by such corporations or institutions (public-sector loans) and issuing bonds (public-sector bonds – "Kommunalschuldverschreibungen") on the basis of the claims acquired.

### **§ 2 (Legal form)**

Mortgage banks may operate only in the legal form of a joint stock company or of a partnership limited by shares.

### **§ 3 (Bank supervision)**

The Federal Financial Supervisory Authority (supervisory authority) shall carry out the supervision of the mortgage banks in accordance with this Act and the German Banking Act.

### **§ 4 (Powers of the supervisory authority)**

The supervisory authority shall be entitled to give any instructions necessary to ensure that the business of the bank complies with the laws, the statute and the provisions laid down in any other mandatory way.

### **§ 5 (Additional business and auxiliary business)**

(1) Mortgage banks may engage only in the following business activities in addition to the transactions listed in § 1:

1. grant loans
  - a) to another Member State of the European Union or to another Contracting State to the Agreement on the European Economic Area, Switzerland, the United States of America, Canada or Japan,
  - b) to regional governments and local authorities of the states covered by letter a) if in accordance with § 43, paragraph 1 of Directive 2000/12/EC of March 20, 2000 relating to the taking up and pursuit of the business of credit institutions (Official Journal EC no. L 126 p. 1) a weighting of not more than 20 percent applies to these loans or this weighting has been set by the competent supervisory authority in the respective state,

- c) to another European state not covered by letter a) which is a full member of the Organization for Economic Cooperation and Development,
  - d) to non-profit administrative organizations which are subordinate to the central governments, regional governments or local authorities of the Member and Contracting States covered by letter a) if the competent authorities in accordance with §43, paragraph 1, letter b), no. 6 in conjunction with §6 of Directive 2000/12/EC have set a weighting for these loans of not more than 20 percent, or
  - e) against assumption of a full guarantee by one of the bodies covered by letters a) to c) and issue public-sector bonds ("Kommunalschuldverschreibungen") on the basis of the claims acquired; the total volume of the loans for which it is not ensured that the preferential right of the public-sector bond creditors, in accordance with §35 in conjunction with §41, sentence 1, extends to the claims of the mortgage bank deriving from these loans may not exceed ten percent of the total volume of the loans granted in accordance with § 1, no. 2 and in accordance with half-sentence 1 in the case of which the preferential right is ensured;
2. on properties situated within the domestic territory or in another Member State of the European Union or in another Contracting State to the Agreement on the European Economic Area or in Switzerland beyond the confines of §§ 11 and 12, paragraph 3, and acquire, dispose of, lend on and pledge mortgages on such properties and public-sector loans, provided that the total volume of all claims secured by mortgages, which may not be used as cover for bonds as they exceed the first three fifths of the market value of the property (§ 12, paragraph 1), does not exceed twenty percent of the total volume of the mortgage lendings; claims remain unconsidered insofar as other sufficient securities exist;
- 2a. grant loans on properties situated in other Member States of the European Union or in other Contracting States to the Agreement on the European Economic Area or in Switzerland, and, on the basis of the mortgages acquired, issue Mortgage Pfandbriefe ("Hypothekenpfandbriefe"); the total volume of the lendings for which it is not ensured that the Pfandbrief creditors' preferential right in accordance with §35 covers the claims of the mortgage bank deriving from these lendings may not exceed ten percent of the total volume of the lendings in accordance with § 1, no. 1 as well as of the lendings in accordance with half-sentence 1 in the case of which the preferential right is ensured;
  - 2b. grant loans on properties situated in other European full Member States of the Organization for Economic Cooperation and Development, the United States of America, Canada or Japan, also beyond the confines of §§ 11 and 12, paragraph 3 inasmuch as
- a) the mortgage in that state constitutes a security customary in banking for the repayment of loans and the payment of interest in respect of loans, and

- b) the total volume of these lendings does not exceed five times the liable own capital, whereby the share of the lendings in Japan shall not exceed three times the liable own capital;
- 3. purchase and sell securities in their own name on behalf of third parties, but with the exclusion of trading in futures;
- 4. for the purpose of granting mortgage loans, public-sector loans and loans in accordance with nos. 1 to 2b
  - a) accept external funds as interest-bearing or non-interest-bearing deposits,
  - b) take up loans and furnish securities for these loans,
  - c) issue bonds without the cover required for Mortgage Pfandbriefe ("Hypothekenpfandbriefe") or public-sector bonds ("Kommunalschuldverschreibungen");
- 4a. conclude transactions through derivatives within the meaning of § 1, paragraph 11, sentence 4, nos. 1 to 4 of the German Banking Act with suitable credit institutions or financial services institutions on the basis of standardized master contracts; excepted here are transactions which may constitute an obligation to engage in a transaction prohibited by this law or which simulate such a transaction, options and other derivatives if they substantiate an open short position of the mortgage bank, and transactions which substantiate in a similar way a risk equivalent to an open short position;
- 5. engage in the safekeeping and administration of securities;
- 5a. engage in the administration or brokerage of mortgage loans or public-sector loans of third parties, or approve same in their own name or in the name of third parties and for account of third parties;
- 5b. furnish evidence of the opportunity to conclude contracts relating to the purchase, sale or use of properties and premises;
- 5c. conduct valuations and location analyses as well as investment and financing counseling, also independently of their own mortgage lendings or of the granting of public-sector loans;
- 6. undertake the collection of bills of exchange, money orders and similar instruments;
- 7. <sup>1</sup>acquire participations in companies if the participations are used to promote the business conducted in accordance with §§ 1, 5, paragraph 1, nos. 1 and 2a, and the liability of the mortgage bank deriving from the participations is limited by the legal form of the company, provided that the individual participation as a whole does not exceed one third of the nominal amount of all shareholdings of the company. <sup>2</sup>A larger participation shall be permitted provided that the object of the company is limited by law or by its statute to, essentially, such business as the mortgage bank is itself entitled to conduct; the total volume of such participations may not exceed twenty percent of the liable own capital.

(2) For the transactions in accordance with § 1, no. 2, the European Communities, the European Investment Bank, the International Bank for Reconstruction and Development (IBRD-World Bank), the Council of Europe Development Bank (CEB) and the European Bank for Reconstruction and Development (EBRD) shall be on a par with domestic corporations and institutions governed by public law.

(3) Mortgage banks may employ available funds remuneratively

1. by investing with suitable credit institutions;
- 1a. by disbursing a mortgage loan prior to furnishing the mortgage bank with real-estate security if a suitable credit institution assumes the full guarantee for the loan until this security is furnished;
2. by purchasing their Mortgage Pfandbriefe ("Hypothekenpfandbriefe") and public-sector bonds ("Kommunalschuldverschreibungen");
3. by purchasing
  - a) bills of exchange and checks which meet the requirements of § 19, paragraph 1, no. 1 of the Deutsche Bundesbank Act,
  - b) bonds, debt register claims, Treasury bills and Treasury certificates the debtor of which is the German Federal Government, a Special Fund of the German Federal Government, a Federal State ("Land"), the European Communities, a State covered by paragraph 1, no. 1, letter a) or c) or a bank covered by paragraph 2,
  - c) bonds for which one of the authorities listed under letter b) has assumed the guarantee of the payment of interest and of principal repayment,
  - d) other bonds which are within the meaning of § 2, paragraph 5 of the German Securities Trading Act admitted to trading on an organized market in a Member State of the European Union or in another Contracting State to the Agreement on the European Economic Area;
4. by lending on securities in accordance with instructions to be drawn up by the mortgage bank; the instructions shall establish the securities on which the loan may be raised and the authorized volume of the loan;
5. by investing in unit certificates representing assets invested in accordance with the principle of risk spreading, which have been issued by an investment management company or by a foreign investment trust subject to special public supervision for the protection of the unitholders, if according to the contractual conditions or the statute of the investment management company or the investment trust the assets may only be invested in the debt securities referred to under nos. 2 and 3 and in bank balances.

(4) Mortgage banks may only acquire properties to prevent losses on mortgages and to obtain business premises and accommodation for their employees.

### **§ 5a (Protection of the name "Pfandbrief")**

Credit institutions governed by private law which are not mortgage banks may not issue bonds under the name "Pfandbrief" or under any other name containing the word "Pfandbrief". This shall not apply to bonds which have been issued or are issued by ship mortgage banks ("Schiffspfandbrief-banken") under the name "Schiffspfandbrief" ("Ship Pfandbrief").

### **§ 6 (Cover for Pfandbriefe)**

(1) <sup>1</sup>The total volume of Mortgage Pfandbriefe ("Hypothekpfandbriefe") outstanding must at all times be covered at their nominal value by mortgages of at least the same amount and with at least the same interest yield (ordinary cover). <sup>2</sup>In addition, the cover for the Mortgage Pfandbriefe ("Hypothekpfandbriefe") must be ensured at all times according to the net present value and the net present value of the recorded cover pool must exceed the total volume of liabilities resulting from Mortgage Pfandbriefe ("Hypothekpfandbriefe") and derivatives to be covered in accordance with par. 6, sentence 2 by 2 percent (securing excess cover). <sup>3</sup>The securing excess cover must consist of assets eligible for substitute cover; insofar the restrictions of paragraph 5 shall not be applicable. <sup>4</sup>Equalization claims converted into bearer bonds in accordance with §8, paragraph 2 of the Ordinance concerning the Confirmation of the Conversion Calculation and the Procedure of the Allotment and Acquisition of Equalization Claims in the version of the announcement of December 7, 1994 (BGBl. I, p. 3738) may also be used as ordinary cover. <sup>5</sup>A Pfandbrief shall be outstanding if the trustee has drawn it up in accordance with §30 paragraph 3 and transferred it to the bank; if a Pfandbrief is returned to the trustee for safekeeping it shall be removed from circulation for the duration of such safekeeping.

(2) <sup>1</sup>Insofar as mortgages on agricultural property are used for this purpose, at least half the cover must consist in sinking fund mortgages for which the annual repayment by the debtor amounts to no less than a quarter percent of the mortgage capital. <sup>2</sup>However, in the event of such mortgages being prepaid, the bank may use mortgages of another kind as substitute cover until the scheduled redemption period expires.

(3) If the bank has a claim to a mortgage on a property which it acquired to prevent a loss from the mortgage, this may be considered as cover for Mortgage Pfandbriefe ("Hypothekpfandbriefe") at a maximum of half the amount at which it had been considered before the bank purchased the property.

(4) <sup>1</sup>The ordinary cover provided for in paragraph 1 may be substituted by the following assets (substitute cover):

1. assets of the kind defined in §5, paragraph 3, no. 3, letters b) and c);
2. balances with the Deutsche Bundesbank and with suitable credit institutions.

<sup>2</sup>In this connection bonds may at most be considered at an amount which remains below their respective market prices by five percent of the nominal value, but may not exceed their nominal value.

(5) The substitute cover may not exceed ten percent of the total volume of Mortgage Pfandbriefe ("Hypothekenpfandbriefe") and public-sector bonds ("Kommunalschuldverschreibungen") outstanding; the share of the assets named in paragraph 4, sentence 1, no. 2 may not exceed ten percent of the Mortgage Pfandbriefe ("Hypothekenpfandbriefe") outstanding.

(6) <sup>1</sup>The mortgage bank may use claims under interest rate and currency swaps and under other derivatives permissible under §5, paragraph 1, no. 4a as ordinary cover inasmuch as it is ensured that the mortgage bank's claims under the derivatives cannot be impaired in the event of the insolvency of the mortgage bank or of the other cover assets. <sup>2</sup>Inasmuch as liabilities of the mortgage bank are substantiated by the derivatives used as cover, the claims of the mortgage bank's counterparties must be covered. <sup>3</sup>The share of the mortgage bank's claims under the derivatives included in the cover in terms of the total amount of cover assets as well as the share of the mortgage bank's liabilities under these derivatives in terms of the total amount of Mortgage Pfandbriefe ("Hypothekenpfandbriefe") outstanding plus the liabilities resulting from derivatives must not exceed 12 percent in each case; the calculation shall be made on the basis of the net present values.

(7) <sup>1</sup>The Federal Ministry of Finance is authorized to determine in consultation with the Federal Ministry of Justice by statutory order which is not subject to approval by the Bundesrat details of the method for calculating the net present value in accordance with paragraph 1, sentence 2 and paragraph 6, sentence 3 as well as the extent of interest rate and exchange rate changes the cover in accordance with paragraph 1, sentence 2 must at least withstand. <sup>2</sup>The Federal Ministry of Finance may assign this authorization by statutory order to the Federal Financial Supervisory Authority.

### ***§ 7 (Limit on Pfandbriefe outstanding)***

(1) The total volume outstanding of a mortgage bank's Mortgage Pfandbriefe ("Hypothekenpfandbriefe") and public-sector bonds ("Kommunalschuldverschreibungen") may not exceed sixty times the liable own capital; the requirement of adequate own funds in accordance with §10 of the German Banking Act shall remain unaffected.

(2) If, in accordance with §5, paragraph 1, no. 4, a mortgage bank accepts money as a deposit or loan or issues bonds, the money, insofar as registered Pfandbriefe or registered public-sector bonds ("Namenskommunalschuldverschreibungen") have not been given to the lender to secure it, and the bonds are to be added to the total amount up to which Mortgage Pfandbriefe ("Hypothekenpfandbriefe") and public-sector bonds ("Kommunalschuldverschreibungen") may be issued in accordance with paragraph 1.

### ***§ 8 (Contents of the Pfandbriefe)***

(1) The relevant conditions governing the legal relationship between the mortgage bank and the Pfandbrief creditors, in particular in relation to the redeemability of the Mortgage Pfandbriefe ("Hypothekenpfandbriefe"), shall be shown in the Mortgage Pfandbriefe ("Hypothekenpfandbriefe").

(2) <sup>1</sup>The mortgage bank may waive the right to redeem Mortgage Pfandbriefe (“Hypothekendarpfandbriefe”) for a maximum period of ten years. <sup>2</sup>Pfandbrief creditors may not be given a right to call for repayment.

### **§ 9 (Maturity limit)**

(1) <sup>1</sup>Mortgage Pfandbriefe (“Hypothekendarpfandbriefe”) shall only be issued if

- a) the maturity of the Pfandbriefe does not substantially exceed the time which is necessary with regard to the maturities of the mortgage loans of the mortgage bank, and
- b) it is envisaged for an appropriate proportion of the newly issued Pfandbriefe that the repayment of the Pfandbriefe must start at the latest after one third of the period to maturity has expired.

<sup>2</sup>The maturity of the Pfandbriefe shall be defined as the period provided for in the terms from the beginning of the payment of interest until the due date originally agreed on. <sup>3</sup>Appropriate within the meaning of sentence 1, letter b) shall be the proportion of the Pfandbriefe referred to there if their proportion of the newly issued Pfandbriefe, together with the newly issued Pfandbriefe with a maturity of up to 15 years, amounts to at least 40 percent.

(2) The issuance of Mortgage Pfandbriefe (“Hypothekendarpfandbriefe”) with a redemption value greater than the nominal value shall be prohibited.

### **§ 10 (Cover mortgages)**

Only mortgages meeting the requirements laid down in §§11 and 12 may be used as cover for Mortgage Pfandbriefe (“Hypothekendarpfandbriefe”).

### **§ 11 (Lending limit)**

(1) (Deleted)

(2) The loan may not exceed the first three fifths of the value of the property.

### **§ 12 (Mortgage lending value)**

(1) <sup>1</sup>The value of the property used as a basis for the loan may not exceed the prudently assessed market value. <sup>2</sup>When establishing this value, only the permanent features of the property and the yield which the property, proper management provided, can sustainably guarantee any owner shall be taken into account.

(2) If an assessment of the market value based on the provisions of §§192 to 199 of the Building Code is available, this shall be taken into consideration when assessing the mortgage lending value.

(3) <sup>1</sup>The mortgages on building land and on new buildings which are not completed or capable of producing a yield used as cover for Mortgage Pfandbriefe ("Hypothekenpfandbriefe") may not in total exceed one tenth of the total amount of the mortgages used to cover Mortgage Pfandbriefe ("Hypothekenpfandbriefe") or twice the liable own capital; the share of mortgages on building land to the total volume of mortgages on building land and new buildings used as cover may not exceed ten percent. <sup>2</sup>Moreover, mortgages on properties which do not guarantee a permanent yield, especially on pits and quarries, shall be excluded from use as cover for Mortgage Pfandbriefe ("Hypothekenpfandbriefe"). <sup>3</sup>The same shall apply to mortgages on mines. <sup>4</sup>Mortgages on other claims for which the provisions relating to properties are applicable shall be excluded from use as cover for Mortgage Pfandbriefe ("Hypothekenpfandbriefe") if the claims do not guarantee a permanent yield.

### ***§ 13 (Instructions on valuation)***

On the basis of the provisions of § 12, the mortgage bank shall publish instructions on valuation; the instructions require approval by the supervisory authority.

### ***§ 14 (Granting of loans)***

(1) Mortgage loans shall be granted in cash.

(2) <sup>1</sup>The granting of loans in the bank's Mortgage Pfandbriefe ("Hypothekenpfandbriefe") at the nominal value shall only be allowed if the bank's statute so permits and the debtor expressly agrees. <sup>2</sup>In this case, the debtor shall be given the right by formal deed to choose whether to repay the mortgage in cash or in Mortgage Pfandbriefe ("Hypothekenpfandbriefe") of the bank belonging to the same type as those received, at the nominal value. <sup>3</sup>Mortgage Pfandbriefe ("Hypothekenpfandbriefe") in the case of which no distinction is made when the official stock market price is established shall be considered, within the meaning of this provision, as always belonging to the same category.

### ***§ 15 (Loan terms)***

<sup>1</sup>The main features of the terms for mortgage loans shall be established by the mortgage bank; the main characteristics require the approval of the supervisory authority. <sup>2</sup>The terms shall state specifically which disadvantages the debtor incurs in the event of non-payment on the due date and under which conditions the bank is entitled to demand prepayment of the mortgage.

### ***§ 16 (Loan prospectuses and application forms)***

All the terms on the way in which the loan will be disbursed, deductions in favor of the bank, the amount and due dates of the interest and the other obligations of the debtor, the start of the redemption and calling for repayment and repayment shall be included in the loan prospectuses and the application forms used by the mortgage bank.

**§ 17 (Deterioration in the state of the property securing the loan)**

(1) <sup>1</sup>In the event of deterioration in the state of the property on which the loan has been granted or its appurtenances, which is not caused by improper management on the part of the owner, the provisions of §§1133 and 1135 of the Civil Code on the right of the creditor to immediate satisfaction out of the proceeds from the sale of the property shall only be applicable in favor of the mortgage bank with regard to the amount for which the cover required by law or statute is no longer available in the reduced value of the property. <sup>2</sup>Over and above this amount, the bank may not reserve the right to require prepayment of the mortgage in the event of a reduction in the value of the property.

(2) If the bank, in the event of part of the property being sold, has reserved further rights in addition to those rights to security or satisfaction to which it is entitled by law, the exercise of these rights shall be precluded if the fact that the sale is not detrimental to the beneficiaries is established by the competent authorities according to the provisions of the laws of the respective Federal State ("Land").

(3) It may not be stipulated that the bank can demand prepayment of the mortgage in the event of its winding up.

**§ 18 (Deleted)**

**§ 19 (Preclusion of the bank's right to call for repayment in the case of redemption mortgages)**

<sup>1</sup>In the case of redemption mortgages, no right to call for repayment in favor of the bank may be stipulated. <sup>2</sup>This shall in no way affect any agreement giving the bank the right to require prepayment of the mortgage for special reasons as a result of the debtor's conduct.

**§ 20 (Postponement of redemption)**

(1) <sup>1</sup>The start of redemption may be postponed for a period not exceeding ten years. <sup>2</sup>If in such a case, following the deferment of the repayment, an amount is payable to the bank apart from the stipulated interest, this shall be made clear in the loan contract. <sup>3</sup>The same shall apply to amounts which the debtor has to pay the bank to refund the costs incurred in procuring the funds.

(2) As from the start of redemption, the annual interest may not be calculated on the basis of a higher amount than that of the residual principal as at the end of the preceding year; the surplus of the annual installment shall be used to redeem the principal.

(3) In individual cases or for groups of similar cases, the supervisory authority may authorize the deferment of the start of the repayment for a longer period than that mentioned in paragraph 1, sentence 1, if this seems justified due to other obligations of the debtor connected to the granting of the loan considering the state of the property lent on.

### ***§ 21 (Partial repayment of redemption mortgages)***

(1) <sup>1</sup>The right of the debtor to effect partial repayment of the mortgage may, in the case of redemption fund mortgages, be restricted in such a way that a payment need only be accepted by the bank if it is intended and is appropriate to reduce the repayment period by one or more years while maintaining the annual installments at the same amount as before. <sup>2</sup>The provision shall not apply, however, if the amount of the payment reaches one tenth of the residual principal and the debtor wishes the subsequent annual installments to be reduced while maintaining the original redemption period; in this case, with regard to the mortgages referred to in §6, paragraph 2, the annual repayment installment may amount to less than a quarter of one percent of the original principal; the bank has to draw up a new repayment schedule.

(2) The bank may not free itself in advance of the obligation, in respect of the amount repaid, to undertake the formalities incumbent on it according to the provisions of civil law for the purpose of correcting the land register, canceling the mortgage or establishing a part mortgage certificate.

(3) Following the publication of the annual accounts the bank shall inform each debtor, at the latter's request, of the amount of the mortgage repaid as at the end of the previous year.

### ***§ 21a (Non-cover mortgages)***

In the case of mortgages which are not used as cover for bonds, deviations may be made from the provisions contained in §§14 to 21.

### ***§ 22 (Mortgage register)***

(1) <sup>1</sup>The mortgages used as cover for the Mortgage Pfandbriefe ("Hypothekenpfandbriefe") and for the claims under derivatives in accordance with §6 paragraph, 6 sentence 2, as well as the other assets used as ordinary cover or securing excess cover shall be recorded by the bank individually in a register. <sup>2</sup>Derivatives may be entered only with the approval of the trustee and of the mortgage bank's counterparty; an entry without the requisite approval shall be deemed as not having been made. <sup>3</sup>In the case of §6, paragraph 4, the assets used as substitute cover shall also be recorded in the register; inasmuch as they are not shares in collective holdings, the registration of securities shall refer to them individually.

(2) <sup>1</sup>Mortgages shall only be regarded as recorded cover pool up to the lending limit in accordance with §11, par. 2.

(3) <sup>1</sup>Within the first month of each half calendar year a transcript, certified by the trustee appointed in accordance with §29, of the entries made in the mortgage register in the previous half-year shall be submitted to the supervisory authority. <sup>2</sup>The transcript shall be kept by the supervisory authority.

### ***§ 23 (Deleted)***

#### **§ 24 (Annual accounts of the mortgage banks)**

If a mortgage bank makes use of the right to carry out extended business operations in accordance with §46, paragraph 1, it has to draw up its annual accounts according to the provisions governing their lines of business not belonging to the business of a mortgage bank and supplement them for the business belonging to that of a mortgage bank according to the classification required for this line of business.

#### **§§ 25 to 27 (Deleted)**

#### **§ 28 (Annual report)**

(1) In the notes to the annual accounts, the following shall be stated:

1. the number of mortgages recorded in the mortgage register and their distribution with the amounts assigned as cover:
  - a) according to their amount in tranches of up to 50,000 euros, from more than 50,000 euros to 500,000 euros and over 500,000 euros, and
  - b) according to the main areas where the mortgaged properties are situated;
2. the amounts accounted for by mortgages on properties for industrial and commercial purposes and on properties used for residential purposes as well as mortgages on building land and on unfinished new buildings not yet capable of producing a yield;
3. the number of forced sale and receivership proceedings pending on the date of closing the accounts, as well as the number of forced sales carried out during the financial year;
4. the number of cases in which the bank had to take over properties to prevent losses on mortgages during the financial year;
5. the total amount of arrears on the interest payable by mortgagors, insofar as these arrears have not already been written off in the previous years;
6. the total amount of mortgage repayments in the financial year, broken down according to repayments through redemption and those made in other ways.

(2) The information referred to in paragraph 1, nos. 3 to 5, shall be shown separately for properties for industrial or commercial purpose and those for residential purposes.

#### **§ 29 (Trustee)**

(1) A trustee and a deputy shall be appointed at each mortgage bank.

(2) <sup>1</sup>The appointment shall be made by the supervisory authority, after the mortgage bank has been heard. <sup>2</sup>The appointment may be revoked by the supervisory authority at any time.

(3) <sup>1</sup>The trustee shall provide the supervisory authority with information on his findings and observations within the scope of his activities. <sup>2</sup>The trustee shall not be bound by the instructions of the supervisory authority.

### ***§ 30 (Duties of the trustee)***

(1) The trustee shall ensure that the prescribed cover for the Mortgage Pfandbriefe ("Hypothekendarlehenpfandbriefe") and for the liabilities under derivatives in accordance with § 6, paragraph 6, sentence 2 exists at all times; in so doing, provided the value of the pledged properties is established in accordance with the instructions approved by the supervisory authority, he shall not be required to investigate whether the value established corresponds to the actual value.

(2) <sup>1</sup>He shall ensure that the assets used as cover for the Mortgage Pfandbriefe ("Hypothekendarlehenpfandbriefe") and for the liabilities under derivatives in accordance with § 6, paragraph 6, sentence 2 are recorded in the mortgage register in accordance with the provisions of § 22, paragraph 1. <sup>2</sup>He shall notify the mortgage bank's counterparty immediately a derivative has been recorded.

(3) <sup>1</sup>Prior to issue, he shall issue for the Mortgage Pfandbriefe ("Hypothekendarlehenpfandbriefe") a certificate to the effect that the prescribed cover exists and has been recorded in the mortgage register. <sup>2</sup>A reproduction of his personal signature shall suffice.

(4) <sup>1</sup>The assets recorded in the mortgage register may be deleted from the register only with the agreement of the trustee. <sup>2</sup>The trustee's agreement must be in writing; he may give his agreement by affixing his signature to the deleting entry in the mortgage register. <sup>3</sup>The agreement of the mortgage bank's counterparty shall also be required for the deletion of a registered derivative that has not yet been fully settled; a deletion without the agreement of the mortgage bank's counterparty shall be deemed as not having been effected. <sup>4</sup>Paragraph 2, sentence 2 shall be applied accordingly.

(5) <sup>1</sup>The trustee shall ensure, when issuing the certificate in accordance with paragraph 3, that the total amount of Mortgage Pfandbriefe ("Hypothekendarlehenpfandbriefe") outstanding does not exceed the limit indicated in § 7. <sup>2</sup>If this limit is exceeded, the trustee shall inform the supervisory authority.

### ***§ 31 (Safekeeping of the cover assets)***

(1) The trustee or a suitable third party commissioned by him shall ensure the safekeeping of the assets recorded in the mortgage register and deeds relating to such assets under dual control with the bank; he may hand over these items only in accordance with the provisions of this Act.

(2) <sup>1</sup>He shall be required to hand over the assets recorded in the mortgage register and the deeds relating to such assets at the bank's request and to assist in their deletion from the register provided that the other assets recorded in the register as cover for the Mortgage Pfandbriefe ("Hypothekendarlehenpfandbriefe") and for the liabilities under derivatives in accordance with § 6, paragraph 6, sentence 2 including the excess cover suffice or the bank makes other prescribed cover available. <sup>2</sup>If the bank

is committed to hand over the mortgage deed to the mortgagor or to carry out the actions as referred to in §1145 of the Civil Code, the trustee must hand over the deeds even if the conditions referred to are not met; if the mortgage is repaid, the corresponding substitute cover assets shall in this case be recorded in the mortgage register and passed on to the trustee for safekeeping in accordance with paragraph 1.

(3) If the bank requires only temporary use of a mortgage deed, the trustee shall hand it over without the bank being required to provide alternative cover.

### ***§ 32 (Powers of the trustee)***

(1) The trustee shall be entitled to inspect the books and documents of the bank at all times insofar as they relate to the Mortgage Pfandbriefe ("Hypothekenpfandbriefe") and to the assets recorded in the mortgage register.

(2) The mortgage bank shall be required to keep the trustee continually informed of the principal repayments relating to the assets recorded in the mortgage register as well as of other changes relating to these assets of importance to the Pfandbrief creditors and the creditors of claims under derivatives in accordance with §6, paragraph 6, sentence 2.

### ***§ 33 (Disputes between the trustee and the bank)***

Disputes between the trustee and the mortgage bank shall be resolved by the supervisory authority.

### ***§ 34 (Trustee's fee)***

The trustee and his deputy shall receive an appropriate fee from the supervisory authority; this shall be refunded separately by the mortgage bank in accordance with §51, paragraph 3 of the German Banking Act and shall be paid in advance at the request of the supervisory authority.

### ***§ 34a (Limitation of seizure and forced sale)***

<sup>1</sup>Seizure and forced sale of the assets recorded in the mortgage register shall only occur due to claims arising from the Mortgage Pfandbriefe ("Hypothekenpfandbriefe") and from derivatives in accordance with §6, paragraph 6, sentence 2. <sup>2</sup>§394 of the Civil Code shall be applied accordingly.

### ***§ 35 (Opening of mortgage bank insolvency proceedings; appointment and competences of the cover pool administrator)***

(1) <sup>1</sup>If insolvency proceedings are opened in respect of the mortgage bank's assets, the assets recorded in the mortgage register shall not be included in the insolvent estate. <sup>2</sup>The claims of the Pfandbrief creditors must be fully satisfied out of the recorded assets; they shall not be affected by the opening of insolvency proceedings in respect of the mortgage bank's assets. <sup>3</sup>The Pfandbrief creditors shall only participate in the mortgage bank's insolvency proceedings to the extent stipulated in paragraph 6, sentence 4.

(2) <sup>1</sup>In the case of paragraph 1 the court at the mortgage bank's head office shall appoint one or two suitable natural persons as cover pool administrators at the request of the supervisory authority. <sup>2</sup>With the appointment the right to manage and dispose of the recorded assets shall be transferred to the cover pool administrator. <sup>3</sup>Should the mortgage bank have disposed of an asset recorded in the mortgage register after the cover pool administrator had been appointed, such disposition shall be invalid; §§892, 893 Civil Code shall remain unaffected. <sup>4</sup>When the mortgage bank has made a disposition on the day of the appointment of the cover pool administrator, it is assumed that the disposition was made after the appointment. <sup>5</sup>The cover pool administrator may carry out legal transactions in relation to the cover pool in as far as this is necessary for an orderly settlement of the cover pool in the interest of full satisfaction of the Pfandbrief creditors. <sup>6</sup>Insofar he represents the mortgage bank in and out of court.

(3) <sup>1</sup>Should the mortgage bank have lent against a property in excess of the lending limit pursuant to §11, par. 2, the mortgages and secured claims recorded in the register shall be subject to the right of management and disposition of the cover pool administrator also in as far as they are not regarded as cover pool according to §22, par. 2. <sup>2</sup>The cover pool administrator shall collect the claims according to their contractual maturity. <sup>3</sup>After appropriate management costs have been deducted, he shall pay over that portion to the insolvent estate which would be attributed to the insolvency assets if there had been separate loan agreements and corresponding individual mortgages. <sup>4</sup>When the amount paid in fact does not suffice, the claims shall be repaid preferentially in as far as they are secured by mortgages eligible for cover; the limit established in §11, par. 2 shall prevail on the basis of the last mortgage lending value assumed before the opening of the insolvency proceedings. <sup>5</sup>The insolvency administrator may demand that loan repayment claims and mortgages be divided; the costs of the split-up shall be paid from assets available in the insolvent estate. <sup>6</sup>The mortgage eligible for cover which results from the split-up shall take priority over the one not eligible for cover.

(4) <sup>1</sup>The insolvency administrator may demand at any time that recorded assets which will obviously not be necessary for cover including the securing excess cover shall be surrendered to the insolvent estate by the cover pool administrator. <sup>2</sup>Assets remaining after the Pfandbrief creditors are satisfied and the management costs are paid must be surrendered to the insolvent estate.

(5) <sup>1</sup>The court at the mortgage bank's head office may also appoint a cover pool administrator at the request of the supervisory authority even before the insolvency proceedings are opened in respect of the mortgage bank's assets if the requirements of §46a of the German Banking Act are met. <sup>2</sup>The provisions on the cover pool administrator appointed in accordance with paragraph 2, sentence 1 shall apply correspondingly to the legal position of the above-mentioned cover pool administrator.

(6) <sup>1</sup>The supervisory authority may take its own measures with respect to the cover pool according to §§46 and 46a of the German Banking Act. <sup>2</sup>In the event of a default or an over-indebtedness of the cover pool separate insolvency proceedings shall be held in relation to it; the petition to open the insolvency proceedings may only be submitted by the supervisory authority. <sup>3</sup>Paragraph 4 shall apply correspondingly. <sup>4</sup>In the insolvency proceedings in relation to the remaining assets of the mortgage bank, Pfandbrief creditors may only assert their claims up to the amount resulting from the default;

furthermore, the provisions for creditors entitled to separate settlement; in particular §52, sentence 1 and § 190, par. 1 and 2 as well as §192 of the Rules of Insolvency shall apply correspondingly.

- (7) The Law referring to the Joint Rights of the Holders of Bonds shall remain unaffected.
- (8) Creditors of claims from derivatives pursuant to §6, par. 6, sentence 2 shall be treated equally to Pfandbrief creditors.

### **§ 35a (Cover pool administrator)**

(1) <sup>1</sup>The cover pool administrator shall be supervised by the court at the mortgage bank's head office. <sup>2</sup>In particular, the court may at any time request certain information or a statement on the current situation and the management from him. <sup>3</sup>At the supervisory authority's request it may remove the cover pool administrator if there is good reason to do so. <sup>4</sup>In relation to the supervisory authority and the trustee, the cover pool administrator shall assume the responsibilities which the mortgage bank must carry out in accordance with this Act and the German Banking Act in relation to the management of the cover pool.

(2) <sup>1</sup>The cover pool administrator shall receive a certificate about his appointment which he must return to the court upon termination of his office. <sup>2</sup>The court shall notify the competent register court about the appointment and removal of the cover pool administrator and announce this fact forthwith in the Federal Gazette. <sup>3</sup>The cover pool administrator' appointment and removal shall be entered in the Register of Companies per curiam. <sup>4</sup>The entries shall not be announced. <sup>5</sup>The provisions of § 15 of the Commercial Code shall not be applicable.

(3) <sup>1</sup>The appointment of the cover pool administrator shall be entered in the land register under the mortgages entered in the register if there is reason to believe that due to the type of right and the circumstances the Pfandbrief creditors may be at a disadvantage if no entry was made. <sup>2</sup>The cover pool administrator shall apply for the entry at the land register office. <sup>3</sup>If mortgages with an entered appointment of a cover pool administrator are removed from the register, the cover pool administrator must apply for the deletion of the entry of the cover pool administrator's appointment at the land register office.

(4) <sup>1</sup>The cover pool administrator shall be entitled to receive remuneration for his work and a refund of appropriate expenses. <sup>2</sup>The costs of the management by the cover pool administrator including his remuneration and refund of his expenses shall be borne by the assets recorded in the mortgage register. <sup>3</sup>The court at the mortgage bank's head office shall establish the remuneration and the expenses upon application of the cover pool administrator. <sup>4</sup>§ 46a, par. 4, sentences 3 and 4 of the German Banking Act shall apply correspondingly.

(5) <sup>1</sup>On taking up his duties, the cover pool administrator must draw up an opening balance sheet and an explanatory statement as well as at the end of each year an annual balance sheet and a situation statement. <sup>2</sup>The annual balance sheet must be audited by an auditor appointed by the supervisory authority. <sup>3</sup>The supervisory authority may order a special audit. <sup>4</sup>The resulting costs incurred by the supervisory authority shall be borne out of the assets recorded in the register.

(6) <sup>1</sup>The cover pool administrator shall manage the assets with the due amount of care of an orderly and conscientious manager. <sup>2</sup>If he violates his duties he shall be liable to pay damages to the mortgage bank.

(7) The cover pool administrator and the insolvency administrator shall notify each other of any information which might be of importance for the insolvency proceedings of the mortgage bank or the management of the cover assets.

### ***§ 35b (Transfer of the cover pool and Pfandbrief liabilities)***

(1) With the written approval of the supervisory authority, the cover pool administrator may transfer all or a part of the assets recorded in the mortgage register, even in as far as they are not regarded as recorded assets according to §22, par. 2, and liabilities from Mortgage Pfandbriefe ("Hypothekpfandbriefe") as an entirety to another mortgage bank in accordance with the following provisions.

(2) The transfer agreement must at least contain the following details:

1. the company and the head office of the transferring mortgage bank and of the mortgage bank taking delivery,
2. the agreement on transfer of the assets recorded in the mortgage register and the liabilities from Mortgage Pfandbriefe ("Hypothekpfandbriefe") as an entirety and, if applicable, of a counter-performance,
3. the exact denomination of the assets to be transferred and of the liabilities from the Mortgage Pfandbriefe ("Hypothekpfandbriefe").

(3) <sup>1</sup>As far as the general provisions establish a certain type of denomination for the transfer of objects in the case of single succession, these provisions shall be applicable to the denomination of the assets to be transferred and the liabilities from the Mortgage Pfandbriefe ("Hypothekpfandbriefe") in accordance with paragraph 2, no. 3. §28 of the Land Register Code shall be observed. <sup>2</sup>Furthermore, reference may be made to certificates whose content enables an allocation of the individual object; the certificates shall be attached to the transfer agreement as appendices.

(4) The transfer agreement must be certified by a notary.

### ***§ 35c (Entry of the transfer in the Register of Companies)***

(1) <sup>1</sup>The cover pool administrator and the representing body of the mortgage bank taking delivery shall apply for entry of the transfer at the Register of Companies at the corresponding mortgage bank's head office. <sup>2</sup>The authentic document of the transfer agreement or a publicly certified copy as well as the certificate of approval by the supervisory authority shall be attached to the application.

(2) <sup>1</sup>The transfer may only be entered in the Register of Companies at the transferring mortgage bank's registered office after it has been entered in the Register of Companies at the registered office of the mortgage bank taking delivery. <sup>2</sup>The entry in the Register of Companies at the registered office of the mortgage bank taking delivery shall be made with the note that the transfer only takes effect upon entry in the Register of Companies at the transferring mortgage bank's registered office.

(3) <sup>1</sup>The court at the transferring mortgage bank's registered office shall officially notify the court at the registered office of the mortgage bank taking delivery of the day of the entry of the transfer and shall submit an extract from the register of companies to it. <sup>2</sup>After receiving the notification, the court at the registered office of the mortgage bank taking delivery shall officially note the date of entry of the transfer in the Register of Companies.

(4) The court at the registered offices of each of the mortgage banks involved in the transfer shall officially announce the executed entry of the transfer with its entire content in the Federal Gazette.

#### ***§ 35d (Delivery of the specified assets and Pfandbrief liabilities)***

(1) <sup>1</sup>Upon entry of the transfer in the Register of Companies at the transferring mortgage bank's head office, the assets and Pfandbrief liabilities detailed in the transfer agreement shall be transferred as an entirety to the mortgage bank taking delivery. <sup>2</sup>The entry eliminates the defects of the notary's certification of the transfer agreement. <sup>3</sup>The transferring mortgage bank and the mortgage bank taking delivery shall be liable jointly and severally for the transferred Pfandbrief liabilities.

(2) In the event that a counter-performance is granted, § 35, par. 4 shall apply correspondingly. § 35, par. 3 shall apply correspondingly subject to the proviso that the mortgage bank taking delivery replaces the cover pool administrator.

#### ***§ 35e (Management in fiduciary capacity by the cover pool administrator)***

(1) <sup>1</sup>With the supervisory authority's written approval the cover pool administrator may agree with another mortgage bank that the insolvent mortgage bank's assets recorded in the mortgage register, even in as far as they are not regarded as recorded assets in accordance with § 22, par. 2, may entirely or in part be held in a fiduciary capacity by the insolvent mortgage bank's cover pool administrator for the other mortgage bank, in as far as the other mortgage bank assumes liability for the covered liabilities of the insolvent mortgage bank. <sup>2</sup>The agreement must be made in writing. <sup>3</sup>The agreement must precisely specify the relevant assets and Pfandbrief liabilities.

(2) The assets held in a fiduciary capacity in accordance with paragraph 1 shall be regarded as assets of the other mortgage bank in the relations between the other mortgage bank and the insolvent mortgage bank or its creditors, even if they have not been transferred to it.

(3) <sup>1</sup>The right of transfer emanating from the fiduciary relationship shall be entered in the mortgage register of the other mortgage bank. <sup>2</sup>The assets specified in the agreement in accordance with paragraph 1 and recorded in the insolvent mortgage bank's cover register shall be regarded as being recorded in the other mortgage bank's register. <sup>3</sup>Insofar, the trustee of the other mortgage bank

exercises his rights and duties in relation to the insolvent mortgage bank. "Note of the management partly in a fiduciary capacity shall be taken in the cover register of the insolvent bank under the individual cover pool assets.

(4) § 35, par. 3 shall apply correspondingly.

### **§ 35f (Partial transfer of the cover pool)**

<sup>1</sup>In the event of partial transfer of the cover pool in accordance with § 35b, par. 1, that proportion of the cover pool which remains at the insolvent mortgage bank must comply with the provisions on the cover for Pfandbriefe. <sup>2</sup>Sentence 1 shall apply correspondingly in the event of management partially in a fiduciary capacity of the cover pool in accordance with § 35e, par. 1.

### **§ 35g (No delaying effect of legal remedies)**

Legal remedies against measures of the supervisory authority in accordance with § 35b, par. 1 as well as § 35e, par. 1, sentence 1 shall not have a suspensive effect.

### **§ 36 (Special powers of the supervisory authority)**

<sup>1</sup>If the total amount of Mortgage Pfandbriefe ("Hypothekendarlehen") outstanding exceeds the limit referred to in § 7, the supervisory authority may order the bank to place all or part of its annual net profit in the reserves until the legally prescribed limit on Pfandbriefe outstanding is complied with.

<sup>2</sup>The supervisory authority may issue this order only if the mortgage bank has not remedied the fault within a time specified by the supervisory authority. <sup>3</sup>Decisions on the distribution of profits shall be null and void inasmuch as they are counter to an order in accordance with sentence 1.

### **§ 37 (Provisions regarding penalties)**

(1) Any person who knowingly issues Mortgage Pfandbriefe ("Hypothekendarlehen") on behalf of a mortgage bank which exceed the amount covered in accordance with the relevant provisions by assets recorded in the mortgage register shall be punished by imprisonment for a term of up to one year or by payment of a fine.

(2) Persons will also be punished who

1. on behalf of a mortgage bank knowingly dispose of an asset recorded in the mortgage register by selling or encumbering it to the detriment of the Pfandbrief creditors or the creditors of claims under derivatives in accordance with § 6, paragraph 6, sentence 2, even though the remaining assets recorded in the register are not sufficient for the prescribed cover of the Mortgage Pfandbriefe ("Hypothekendarlehen") and of the claims under derivatives in accordance with § 6, paragraph 6, sentence 2, or,
2. contrary to the provisions of § 31, paragraph 2, sentence 2 omit in the case of the repayment of a mortgage to record the corresponding substitute cover assets in the mortgage register and to hand them over to the trustee for safekeeping.

### **§ 38 (Irregularities)**

(1) A person's conduct shall constitute an irregularity if he willfully or through negligence issues Mortgage Pfandbriefe ("Hypothekenpfandbriefe") on behalf of a mortgage bank without the certificate required in accordance with §30, paragraph 3.

(2) Irregularities shall be punishable by a fine of up to fifty thousand euros.

### **§ 39 (Deleted)**

#### **§ 39a (Competent administrative authority)**

The administrative authority within the meaning of §36, paragraph 1, no. 1 of the Procedural Irregularities Act shall be the supervisory authority.

#### **§ 40 (Equalization of land charges with mortgages)**

(1) Within the meaning of this Act, land charges shall be equal with mortgages.

(2) If the bank has acquired a property at a forced sale as protection against loss on a mortgage or land charge claim it has on the property and has had a land charge recorded in its favor in place of the canceled mortgage or land charge, the provisions of §6, paragraph 3 shall be correspondingly applicable to this land charge.

(3) The claim against a suitable credit institution to assignment or partial assignment of a real estate lien that is being administered by the credit institution on a fiduciary basis in favor of the mortgage bank shall rank equal with the creation of a real estate lien that is not being used as cover for Mortgage Pfandbriefe ("Hypothekenpfandbriefe"); the total amount of these claims of the mortgage bank must not exceed twice the liable own capital.

#### **§ 41 (Public-sector bonds – "Kommunalschuldverschreibungen")**

<sup>1</sup>If public-sector bonds ("Kommunalschuldverschreibungen") are issued by a mortgage bank in accordance with §1, no. 2 or §5, paragraph 1, no. 1, then the provisions of §6, paragraphs 1, 6 and 7, §8, paragraphs 1 and 2, sentence 2, §9, paragraph 1, sentences 1 and 2 and paragraph 2, and of §22, par. 1 and 3, §§29 to 34a, §35 par. 1, 2 and 4 to 9; §§35a to 36, 37 to 39a and 45, shall be applicable to these bonds and to the underlying loan claims, subject to the proviso that public-sector bonds ("Kommunalschuldverschreibungen") replace Mortgage Pfandbriefe ("Hypothekenpfandbriefe"), public-sector bond creditors replace Pfandbrief creditors, public-sector loans replace mortgages and the cover register for public-sector loans and substitute assets intended as cover for public-sector bonds ("Kommunalschuldverschreibungen") replaces the mortgage register. <sup>2</sup>Balances with the Deutsche Bundesbank and with suitable credit institutions may be used as substitute cover; they may not exceed ten percent of the total volume of the public-sector bonds ("Kommunalschuldverschreibungen") outstanding. <sup>3</sup>Public-sector bonds ("Kommunalschuldverschreibungen") may also be issued under the term "Public Pfandbrief" ("Öffentlicher Pfandbrief").

**§ 42 to 43 (Deleted)**

**§ 44 (Entry into force of the Act)**

**§ 45 (Transitional regulation on mortgage discounts and Pfandbrief disgios)**

For business concluded before July 1, 1988, the assignment of accounting periods may continue to be conducted in accordance with §25 in the version valid prior to that date.

**§ 46 (“Mixed” mortgage banks)**

(1) The mortgage banks in existence at the time this Act comes into force shall not be subject to the provisions of §5 inasmuch as up to May 1, 1898 they engaged in accordance with their statute in business operations in a scope more extensive than that referred to in §5.

(2) <sup>1</sup>In the case of a mortgage bank which makes use of the right to conduct more extensive business in accordance with paragraph 1, the total volume of Mortgage Pfandbriefe (“Hypothekenspfandbriefe”) and public-sector bonds (“Kommunalschuldverschreibungen”) outstanding may not exceed forty-eight times the liable own capital; the requirement of adequate own funds in accordance with §10 of the German Banking Act shall remain unaffected. <sup>2</sup>§ 7, paragraph 2, shall be correspondingly applicable.

**§ 47 to 53 (Deleted)**

# MORTGAGE PFANDBRIEF NET PRESENT VALUE REGULATION

## **Regulation on the safeguarding at all times of the cover for Mortgage Pfandbriefe and Public Pfandbriefe according to the net present value and the calculation of same in the case of Mortgage Banks (Mortgage Pfandbrief Net Present Value Regulation – HypBarwertV)**

of December 19, 2003 (BGBl. 2003 I 2818-2820)

On the basis of § 6 par. 7, also in conjunction with § 41 sentence 1, of the Mortgage Bank Act (HBG) as amended in the announcement of September 9, 1998 (BGBl. I p. 2674), of which § 6 par. 7 was inserted by Article 11 no. 2 letter c of the Act of June 21, 2002 (BGBl. I p. 2010) and § 41 sentence 1 was amended by Article 11 no. 14 of the Act of June 21, 2002 (BGBl. I p. 2010), in conjunction with § 1 no. 6 of the Regulation on the Transfer of Powers to Issue Regulations to the Federal Financial Supervisory Authority of December 13, 2002 (BGBl. 2003 I p. 3), last amended by the Regulation of December 15, 2003 (BGBl. I p. 2637), the Federal Financial Supervisory Authority issues the following Regulation in agreement with the Federal Ministry of Justice:

### **§ 1 Definitions**

Within the meaning of this Regulation

1. "net present value" is the sum of all cash flows discounted to the current day using prevailing market yield curves in each case, and
2. "exchange rate" is the value of a foreign currency unit as is calculated on the basis of the current euro reference rates published daily by the European Central Bank. When converting currencies for which no euro reference rate is published, the current mean values calculated from determinable buying and selling rates shall be used as a basis.

### **§ 2 Calculation of net present value**

<sup>1</sup>The net present values of the Mortgage Pfandbriefe outstanding and of the assets used to cover them shall be calculated and matched against each other every bank working day. <sup>2</sup>The match shall be effected by deducting the net present value of the Mortgage Pfandbriefe outstanding from the net present value of the assets used to cover them. <sup>3</sup>If the result is a negative amount, it must immediately be redressed in terms of the net present value in the form of additional cover assets.

### **§ 3 Calculating the current net present values**

(1) <sup>1</sup>When calculating the net present values only the currency-specific yield curve for swap deals may be used. <sup>2</sup>In deviation from sentence 1, derivatives are to be considered at their current market price, which shall be determined by a body that is not subject to directions by trade and meets all the organizational, material and professional prerequisites in order to calculate the market price.

(2) The net present values of foreign currency positions shall be converted into euros at the current rate of exchange at any given time.

#### **§ 4 Stress test**

<sup>1</sup>The institution must ensure that the net present value cover pursuant to § 6 par. 1 sentence 2 of the Mortgage Bank Act (HBG) is given also in the event that interest rates and exchange rates change. <sup>2</sup>To this end, it must subject the portfolio on which the calculation is based pursuant to § 3 par. 1 at least once a week to a stress test in accordance with §§ 5 and 6. <sup>3</sup>If the subsequent match of the amount of the value of the Mortgage Pfandbriefe outstanding and of the assets used to cover them produces a net present value shortfall in coverage on the basis of the net present values calculated in the respective stress test, the highest net present value shortfall resulting from the simulations in their entirety shall immediately be added to the cover pool. <sup>4</sup>The cover pool may be reduced only if the result of the stress test does not, also thereafter, indicate a net present value cover shortfall.

#### **§ 5 Simulation of the impact of interest rate changes on the net present values**

(1) <sup>1</sup>In order to represent the impact of interest rate changes, the interest rate curves used to calculate the net present value are to be shifted upwards or downwards according to a static or a dynamic approach by a certain number of basis points in each case; resulting negative interest rates are to be set at zero. <sup>2</sup>Subsequently, using the resulting new interest rate curves, new net present values are to be calculated for all the components of the portfolio used as a basis for the calculation pursuant to § 3 par. 1. <sup>3</sup>§ 6 is then to be applied to foreign currency positions.

1. The number of basis points for the static approach is 250.
2. <sup>1</sup>For the dynamic approach, a number and distribution of maturities appropriate to the scope and structure of the institution's transaction shall be selected on the respective interest rate curve, whereby they must be at least six in number and comprise the maturities 1 month, 1 year, 5 years, 7 years, 10 years and 15 years. <sup>2</sup>The standard deviation of the daily differences between the logarithmized interest rates is to be determined, for the interest rate of each maturity selected, on the basis of the historical observation period of the previous 250 bank working days. <sup>3</sup>The standard deviation of the respective maturity is then, on the basis of a one-sided confidence level of 99 percent and a holding period of the portfolio of 6 months, to be multiplied by a factor of 2.33 and the square root of 125. <sup>4</sup>The resulting values are subsequently to be multiplied by the current interest rate of the respective maturity and, thereafter, by a factor of 100. <sup>5</sup>The underlying interest rate curve shall be shifted upwards or downwards with regard to the relevant maturity by the basis points thus established. <sup>6</sup>The new interest rates obtained by this method shall be interpolated to construct the new interest rate curves.

(2) <sup>1</sup>Deviating from subsection 1., a risk value may also be applied. <sup>2</sup>This is to be calculated in accordance with nos. 1 to 4 using the institution's own risk model, the suitability of which has been confirmed in writing by the Federal Financial Supervisory Authority (Federal Authority) in accordance with § 32 of Principle I concerning the Capital of Institutions as amended in the announcement of October 29, 1997 (Federal Gazette (BAnz.), p. 13 555), last amended by the announcement of July 20, 2000 (Federal Gazette (BAnz.), p. 17 077).

1. For the adjustment to the requirements of the dynamic approach the selected maturities must include at least the maturities stated in par. 1 no. 2.

2. The risk value estimated using the risk model must be scaled up from a holding period of 10 days to 125 days by multiplying by the square root of 125 and dividing by the square root of 10.
  3. Currency risks which within the scope of the estimate of the risk value are not considered at least in accordance with the requirements of § 6 shall by way of addition be taken into consideration in accordance with the requirements stated therein.
  4. The net present value of the cover pool calculated in accordance with § 3 is to be reduced by the calculated risk value.
- (3) Once selected, the procedure shall be applied throughout for all calculations.

### ***§ 6 Simulation of the impact of changes in exchange rates on the net present values***

(1) <sup>1</sup>For foreign currency positions of the same denomination, the difference must be determined between the net present values of the currency asset positions and currency liability positions calculated according to § 5 par. 1. <sup>2</sup>In the event that the difference between the net present values is positive, markdowns – and in the event that the difference is negative, markups – shall be effected in accordance with par. 2.

(2) <sup>1</sup>The markdowns or markups to be made in accordance with par. 1 must be calculated according to a static or a dynamic approach. <sup>2</sup>Once selected, the procedure shall be applied throughout for all calculations.

1. For the static approach, the following percentage markdowns or markups shall be applied to the current exchange rates of the respective foreign currency unit:
  - a) 10 percent in the case of currencies of other Member States of the European Union, of other Contracting States of the Agreement on the European Economic Area and of Switzerland,
  - b) 15 percent in the case of currencies of other European Full Member States of the Organization for Economic Cooperation and Development,
  - c) 20 percent in the case of the currencies of the United States of America, Canada and Japan,
  - d) at least 25 percent in the case of currencies of other states.
2. <sup>1</sup>For the dynamic approach the standard deviation of the daily differences between the logarithmized exchange rates shall be determined on the basis of the historical observation period of the previous 250 bank working days. <sup>2</sup>The standard deviation of the respective exchange rate is then, on the basis of a one-sided confidence level of 99 percent and a holding period of the portfolio of 6 months, to be multiplied by a factor of 2.33 and the square root of 125. <sup>3</sup>The resulting value is to be multiplied by the current exchange rate of the respective foreign currency. <sup>4</sup>The result is equivalent to the markdown or markup to be applied to the current exchange rate.

### ***§ 7 Duties of documentation***

- (1) Each institution shall be obliged to document
  1. the procedure for evaluating derivatives in accordance with § 3 par. 1 sentence 2 as well as later changes to this procedure,

2. the procedure for determining the standard deviation as well as the interpolation procedure in accordance with § 5 par. 1 no. 2,
  3. the manner in which the currency risks are considered or included in accordance with § 5 par. 2 no. 3,
  4. the procedure for determining the standard deviation in accordance with § 6 par. 2 no. 2
- (2) The institution shall hold the documentations in safekeeping on a permanent basis.

### ***§ 8 Change of method***

<sup>1</sup>Once it has been selected, the institution may change the calculation procedure only with the Federal Authority's consent. <sup>2</sup>A change shall be deemed to be not only the selection of another specified calculation procedure but also a change of parameters and procedures within the calculation procedure applied in each case. <sup>3</sup>Where institutions use their own risk models, sentence 2 second half-sentence shall apply with the restriction that, irrespective of § 32 of Principle I concerning the Capital of Institutions, consent shall be required only with regard to a change of the parameters stated in § 5 par. 2. <sup>4</sup>Consent can be given only if the institution explains convincingly that the changed method enhances the quality of the result.

### ***§ 9 Public-sector bonds***

The provisions of this Regulation shall apply to public-sector bonds issued by the mortgage bank with the proviso that the public-sector bonds take the place of the Mortgage Pfandbriefe.

### ***§ 10 Transitional arrangement***

The institutions may continue until April 30, 2004 to make the calculation required under § 6 par. 1 sentence 2 of the Mortgage Bank Act to safeguard at all times the cover for Mortgage Pfandbriefe according to the net present value using the procedures applied before this Regulation entered into force.

### ***§ 11 Entry into force***

This Regulation shall enter into force on the day after promulgation.

---

Working translation submitted by the Association of German Mortgage Banks (VDH), not officially licensed by the Federal Financial Supervisory Authority (BaFin).



Association of German Mortgage Banks  
P.O. Box 64 01 36, 10047 Berlin, Germany  
Georgenstrasse 21, 10117 Berlin, Germany  
e-mail: [info@pfandbrief.org](mailto:info@pfandbrief.org)  
[www.pfandbrief.org](http://www.pfandbrief.org)  
[www.hypverband.de](http://www.hypverband.de)  
Tel.: +49 30 20915-100  
Fax: +49 30 20915-101