

# § PfandBG

## PFANDBRIEF ACT

Net Present Value Regulation (*Barwertverordnung*)  
Regulation on the Determination of the Mortgage Lending Value (*Beleihungswertermittlungsverordnung*)  
Cover Register Statutory Order (*Deckungsregisterverordnung*)  
Regulation on the Determination of the Mortgage Lending Values of Ships and Ships under Construction (*Schiffsbeleihungswertermittlungsverordnung*)  
Regulation on the Determination of the Mortgage Lending Values of Aircraft (*Flugzeugbeleihungswertermittlungsverordnung*)  
German Banking Act (*Kreditwesengesetz*) – Excerpt  
Funding Register Statutory Order (*Refinanzierungsregisterverordnung*)

As at January 2011



**VERBAND DEUTSCHER  
PFANDBRIEFBANKEN**

Association of German Pfandbrief Banks

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## **Pfandbrief Act\***

(Pfandbriefgesetz)

JANUARY 2011

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# Pfandbrief Act (PfandBG)

## SECTION 1

### Field of Application, Licence and Supervision

#### § 1 Definitions

(1) <sup>1</sup>Pfandbrief banks are credit institutions whose business consists in Pfandbrief business.  
<sup>2</sup>Pfandbrief business is

1. the issuing of covered bonds on the basis of mortgages acquired under the term “Pfandbriefe” or “Hypothekendarlehen” (Mortgage Pfandbriefe) (hereinafter referred to as Mortgage Pfandbriefe),
2. the issuing of covered bonds on the basis of claims acquired against public-sector bodies under the term “Kommunalschuldverschreibungen”, “Kommunalobligationen” (public-sector bonds) or Öffentliche Pfandbriefe (Public Pfandbriefe) (hereinafter referred to as Public Pfandbriefe),
3. the issuing of covered bonds on the basis of ship mortgages acquired under the term “Schiffspfandbriefe” (Ship Pfandbriefe).
4. the issuing of covered bonds on the basis of registered liens acquired in accordance with § 1 Law on Rights in Aircraft (LuftFzRG) or foreign aircraft mortgages under the term “Flugzeugpfandbriefe” (Aircraft Pfandbriefe).

(2) <sup>1</sup>The right against a suitable credit institution to the assignment or partial assignment of a mortgage that is being administered on a fiduciary basis by the credit institution on behalf of the Pfandbrief bank, if separable from the trustee’s assets in case of its insolvency, shall be on an equal footing with the purchase of a mortgage. <sup>2</sup>Sent. 1 shall apply *mutatis mutandis* to claims within the meaning of par. 1 sent. 2 no. 2 in respect of ship mortgages and registered liens within the meaning of par. 1 sent. 2 no. 4 or foreign aircraft mortgages. <sup>3</sup>In the case of claims within the meaning of par. 1 sent. 2 no. 2 against public-sector debtors within the meaning of § 20 par. 1, the object of the right of assignment or transfer can also be rights against suitable other credit institutions and rights which fulfill the conditions of sent. 1 or rights the object of which are alike rights against suitable credit institutions or security custodians under public supervision.

(3) Pfandbriefe within the meaning of the following provisions are Mortgage Pfandbriefe, Public Pfandbriefe, Ship Pfandbriefe and Aircraft Pfandbriefe.

#### § 2 Licence

(1) <sup>1</sup>A credit institution with its head office within the purview of this Act which wishes to engage in Pfandbrief business shall require the written licence of the Federal Financial Supervisory Authority (supervisory authority) in accordance with § 32 of the German Banking Act. <sup>2</sup>In addition, the credit institution must meet the following conditions for a licence to engage

in Pfandbrief business:

1. The credit institution must have core capital of at least 25 million Euros.
2. The credit institution must have a licence to engage in lending business within the meaning of § 1 par. 1 sent. 2 no. 2 of the German Banking Act and must intend to engage in these activities.
3. The credit institution must have at its disposal suitable procedures and instruments within the meaning of § 27 to manage, monitor and control risks for the cover pools and the issuing business based thereon.
4. The credit institution’s business plan to be submitted to the supervisory authority must state that the credit institution will engage in Pfandbrief business regularly and on a sustained basis and that the necessary organizational structure is in place.
5. Depending on the scope of the licence granted, the credit institution’s organizational structure and resources must take future Pfandbrief issues as well as real estate financing, public-sector lending, ship financing or aircraft financing activities suitably into account.

<sup>3</sup>Notwithstanding § 33 par. 4 of the German Banking Act, the licence required pursuant to sent. 1 shall also be refused when the conditions of sent. 2 nos. 1 to 5 are not met. <sup>4</sup>§ 32 par. 2 sent. 2 of the German Banking Act shall be applied subject to the condition that the licence to engage in Pfandbrief business may also be limited to one or several of the activities named in § 1 par. 1 sent. 2 nos. 1 to 4. <sup>5</sup>The theoretical and practical knowledge required under § 33 par. 2 sent. 1 of the German Banking Act shall, depending on the scope of the licence granted, as a rule be assumed to be given with respect to Pfandbrief business if the managers have appropriate knowledge in the field of mortgage lending, public-sector lending, ship mortgage lending or aircraft lien lending and the refinancing thereof.

(2) Except in the cases specified in § 35 par. 2 of the German Banking Act the supervisory authority may also revoke the licence to engage in Pfandbrief business if

1. the conditions of par. 1 sent. 2 nos. 1 to 3 and 5 are no longer met or
2. the Pfandbrief bank has not issued any Pfandbriefe for more than two years and it is not to be expected that Pfandbrief business will be resumed within the next six months as banking business conducted as a regular and sustained business.

(3) If the supervisory authority revokes the licence to engage in Pfandbrief business or such licence expires, the cover pools shall be settled.

(4) If the supervisory authority completely revokes the licence pursuant to section 32 of the German Banking Act to conduct banking business or provide financial services or if such licence expires, the Pfandbrief bank’s current licence shall remain valid with due regard to the cover assets and to the liabilities backed by same until the Pfandbrief liabilities have been fulfilled in their entirety and punctually unless the supervisory authority explicitly orders that the revoking of the licence be extended.

(5) <sup>1</sup>In the cases of par. 3 and par. 5 the court at the Pfandbrief bank’s head office shall appoint one or two suitable natural persons as cover pool administrator at the request of the supervisory authority if this is necessary for the complete and punctual fulfillment of the Pfandbrief liabilities and a cover pool administrator has not already been appointed pursuant

to § 30 par. 2 or 5. <sup>2</sup>The appointment may also take place at the request of the supervisory authority with the approval of the management of the Pfandbrief bank if the appointment of a cover pool administrator appears conducive. <sup>3</sup>The provisions of §§ 30 to 36 shall apply *mutatis mutandis* to the legal position of this cover pool administrator.

### § 3 Supervision

<sup>1</sup>The supervisory authority shall carry out the supervision of the Pfandbrief banks in accordance with the provisions of this Act and of the German Banking Act. <sup>2</sup>It shall be entitled to give any instructions that are appropriate and necessary to ensure that the business of the Pfandbrief banks complies with this Act and the statutory orders issued in connection therewith. <sup>3</sup>It shall examine on the basis of suitable random checks the cover for the Pfandbriefe at points in time that it shall determine; it may call on the services of other persons and institutions for this purpose. <sup>4</sup>The examination shall as a rule be carried out every two years. <sup>5</sup>The supervision carried out by other government bodies shall remain unaffected.

## SECTION 2 General Provisions concerning Pfandbrief Issuance

### § 4 Matching cover

(1) <sup>1</sup>The cover of the Pfandbriefe outstanding must be ensured at all times according to the net present value, which shall include interest and principal obligations; the net present value of the recorded cover assets must exceed by 2 percent the net present value of the liabilities to be covered (statutory overcollateralization). <sup>2</sup>The statutory overcollateralization must comprise

1. 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, the European Communities, another Member State of the European Union, another Contracting State to the Agreement on the European Economic Area, the European Investment Bank, the International Bank for Reconstruction and Development, the Council of Europe Development Bank or the European Bank for Reconstruction and Development; this shall also apply to bonds, debt register claims, Treasury bills and Treasury certificates the debtors of which are Switzerland, the United States of America, Canada or Japan insofar as their risk weighting has been assigned to credit quality step 1 according to Table 1 of Annex VI of Directive 2006/48/EC of the European Parliament and Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (Official Journal of the EU no. L 177 p. 1) in the version valid from time to time,
2. bonds for which one of the authorities listed under no. 1 has assumed the guarantee in respect of the payment of interest and of principal repayment,
3. deposits with the European Central Bank, with central banks of the Member States of the European Union or with suitable credit institutions seated in one of the states named in no. 1, which have been assigned a risk weighting equivalent to credit quality step 1 according to Table 3 of Annex VI of Directive 2006/48/EC in accordance with the national regulations which have been enacted to implement the framework agreement “International Convergence of Capital Measurement and Capital Standards” of the Basel

Committee on Banking Supervision of June 2004 as being of equal status to Directive 2006/48/EC, the fulfilment of which is not conditional, limited in time, subordinated to other claims by way of a legal transaction or restricted in any other way, however only inasmuch as the amount of the claims of the Pfandbrief bank is known at the time of purchase; allocation to credit quality step 1 shall be based on the ratings awarded by recognized international rating agencies.

<sup>3</sup>The limits set forth in § 19 par. 1 nos. 2 and 3, of § 20 par. 2 no. 2, of § 26 par. 1 nos. 3 and 4, and of § 26f par. 1 nos. 3 and 4 shall not apply in this respect.

(1a) <sup>1</sup>In addition, the claims maturing under recorded cover assets and maturing liabilities under Pfandbriefe outstanding and derivative transactions included in cover shall be reconciled against each other on a same-day basis for the next 180 days in order to safeguard liquidity. <sup>2</sup>For each individual day the total shall be calculated of the daily differences arising. <sup>3</sup>The greatest calculated negative total in the next 180 days must be covered at all times by the total of cover assets in accordance with par. 1 sent. 2 and the recorded cover assets that are considered by the European System of Central Banks as being eligible for central bank credit. <sup>4</sup>The restrictions set forth in §§ 19, 20, 26 and 26f shall not apply to assets which are recorded in the cover register solely to cover liquidity.

(2) <sup>1</sup>The respective total volume of the Pfandbriefe outstanding of each class must also be covered at all times in the amount of the nominal value by assets of at least the same amount. <sup>2</sup>If the maximum redemption value known at the time the Pfandbriefe are issued is higher than the nominal value, it shall take the place of the nominal value.

(3) <sup>1</sup>Inasmuch as liabilities of the Pfandbrief bank are substantiated by derivative transactions used as cover, the claims of the Pfandbrief bank’s counterparties must also be covered. <sup>2</sup>Derivative transactions within the meaning of this Act shall be derivatives grouped together under a standardized master contract in accordance with § 1 par. 11 sent. 4 no. 1 of the German Banking Act including the collateral support annexes concluded under the master contract and further agreements.

(4) The Pfandbrief bank shall ensure continuously by way of suitable calculation models and document in a lucid manner that the prescribed cover is given at all times.

(5) A Pfandbrief shall be in circulation if the cover pool monitor has executed it in accordance with § 8 par. 3 and transferred it to the Pfandbrief bank; if it is ensured that a disposal in respect of a Pfandbrief held by the Pfandbrief bank would not be carried out without the cover pool monitor’s approval, the Pfandbrief is removed from circulation for the duration of such safekeeping.

(6) <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 par. 1 sent. 1 and § 19 par. 1 no. 4 sent. 3, also in conjunction with § 20 par. 2 no. 3 and § 26 no. 5 as well as § 26f par. 1 no. 5, as well as the extent of interest rate and exchange rate changes the cover in accordance with par. 1 sent. 1 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. <sup>3</sup>The umbrella organizations of the banking industry shall be heard before the statutory order is issued.

**(7)** <sup>1</sup>It shall be forbidden for a Pfandbrief bank to issue Pfandbriefe if their amount is not covered in accordance with the relevant provisions by the assets recorded in the respective cover register. <sup>2</sup>It shall also be forbidden for a Pfandbrief bank to dispose of an asset recorded in the cover register by selling or encumbering it to the detriment of the Pfandbrief creditors or of the creditors of claims under derivative transactions in accordance with par. 3, although the remaining assets recorded in the respective register are not sufficient for the prescribed cover of the Pfandbriefe and of the claims under derivative transactions in accordance with par. 3. <sup>3</sup>Pfandbriefe may not be issued without the certificate required in accordance with § 8 par. 3 sent. 1.

## § 5 Cover register

**(1)** <sup>1</sup>The cover assets used to cover the Pfandbriefe as well as the claims under derivative transactions in accordance with § 4 par. 3 shall be recorded by the Pfandbrief bank individually in the register (cover register) maintained for the respective Pfandbrief type. <sup>2</sup>Derivatives may be entered only with the approval of the cover pool monitor and of the Pfandbrief bank's counterparty; an entry without the requisite approval shall be deemed as not having been made. <sup>3</sup>If an asset needed for cover is repaid, the party responsible for recording the cover assets shall enter corresponding substitute cover assets into the cover register without delay. <sup>4</sup>For each cover register more than one subsidiary registers may be created which meet the requirements of the cover register, if this does not impair the clarity and function of the cover register. <sup>5</sup>The supervisory authority may order that the entries in one subsidiary register or several subsidiary registers are to be transferred to the principal register within an appropriate period of time.

**(1a)** <sup>1</sup>Insofar as recorded cover assets are only partially to serve as cover for the Pfandbriefe of the Pfandbrief bank, the cover register must contain precise details regarding the scope of the part to serve as cover and its rank in relation to the part not serving as cover; in case of doubt, the part to serve as cover shall have priority. <sup>2</sup>Subject to a partial inclusion in cover in a smaller amount in accordance with sentence 1, mortgages shall at all times be eligible to serve as cover only up to the amount of the lending limit in accordance with §§ 14 and 22 par. 2 as well as § 26b par. 2. <sup>3</sup>The lending limit is calculated on the basis of the recorded lending value; in case of doubt, the part to serve as cover shall have priority. <sup>4</sup>Where recorded assets are managed in their entirety or in part by the Pfandbrief bank as a fiduciary, the cover register must contain precise information regarding the creditor of the right of transfer; in the case of partial management on a fiduciary basis, sentences 1 and 2 shall apply *mutatis mutandis*. <sup>5</sup>Management on a fiduciary basis in accordance with sentence 4 shall be given if the assets managed are, in terms of the parts held by the fiduciary and the Pfandbrief bank or its creditor

are deemed to be assets of the fiduciary, although they have not been transferred, in particular in the case of management as a funding enterprise in accordance with §§ 22a to 22o of the German Banking Act.

**(1b)** The transmission of the personal data to be entered in the cover register to a Pfandbrief bank which is obliged under the Cover Register Statutory Order to enter the data in its cover register for the purpose of funding through Pfandbriefe shall be permissible in order that legitimate interests may be safeguarded.

**(2)** <sup>1</sup>Within the first month of each half calendar year a transcript, certified by the cover pool monitor appointed in accordance with § 7, of the entries made in the cover registers in the previous half calendar year shall be submitted to the supervisory authority. <sup>2</sup>If a cover pool monitor was appointed for the first time in the course of the last half calendar year, the certified transcript must contain all the entries made in the cover registers. <sup>3</sup>The statutory order to be issued in accordance with par. 3 may stipulate that, notwithstanding sentence 1, in the event that the record is transmitted in electronic form it must contain all the entries made in the cover registers.

**(3)** The Federal Ministry of Finance shall determine in consultation with the Federal Ministry of Justice by statutory order which is not subject to approval by the Bundesrat details of the form and the requisite contents of the cover register as well as of the entries to be made. <sup>2</sup>The statutory order shall also contain provisions concerning the form of the transcript, the form of the confirmation by the cover pool monitor as well as the type and manner of the transmission of the transcript and the safekeeping of same by the supervisory authority. <sup>3</sup>The head organizations of the banking industry shall be heard before the statutory order is issued. <sup>4</sup>The Federal Ministry of Finance may assign this authorization by statutory order to the Federal Financial Supervisory Authority.

## § 6 Contents of the Pfandbriefe

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

**(2)** Pfandbrief creditors may not be given a right to call for repayment.

**(3)** The issuance of Pfandbriefe the maximum redemption value of which is not known shall be prohibited.

## § 7 Cover pool monitor and deputy

(1) A cover pool monitor and at least one deputy shall be appointed at each Pfandbrief bank.

(2) <sup>1</sup>The cover pool monitor and deputy must possess the expertise and experience necessary to enable them to fulfill their duties. <sup>2</sup>Qualifications as certified auditor or sworn accountant suggest that the requisite expertise is given. <sup>3</sup>An appointment as cover pool monitor or deputy shall be ruled out on account of presumed partiality. <sup>4</sup>In particular, this shall be the case if the person is or was in the employ of or a representative of the Pfandbrief bank within the previous three years.

(3) <sup>1</sup>The appointment shall be made by the supervisory authority after the Pfandbrief bank has been heard; prior to the first-time issuance of Pfandbriefe an appointment is possible only upon application by the Pfandbrief bank. <sup>2</sup>The appointment may be limited in time and revoked by the supervisory authority at any time for an objective reason. <sup>3</sup>The appointment shall expire, at latest, as at the end of the month in which the appointed person reaches the age of 75 years. <sup>4</sup>When a cover pool administrator is appointed pursuant to § 2 par. 5 or § 30 par. 2 or 5, the office of cover pool monitor shall remain suspended until the office of cover pool administrator has ended. <sup>5</sup>The cover pool monitor remains obliged to provide the cover pool administrator with all such information as might be of relevance to the administration of the cover assets.

(4) <sup>1</sup>The cover pool monitor shall provide the supervisory authority with information on his findings and observations within the scope of his activities. <sup>2</sup>The cover pool monitor shall not be bound by the supervisory authority's instructions.

(5) <sup>1</sup>In the performance of their duties the cover pool monitor and deputy shall be liable towards the Pfandbrief bank as well as to the Pfandbrief creditors and the creditors as a result of claims acquired under derivative transactions in accordance with § 4 par. 3 only in case of intent and gross negligence. <sup>2</sup>The cover pool monitor's or cover pool monitor's deputy's liability for damages shall in the case of gross negligence be limited to 1 million Euros. <sup>3</sup>It may not be contractually excluded or limited. <sup>4</sup>If the cover pool monitor's or cover pool monitor's deputy's liability is covered by insurance, a retention in the amount of one and a half times the annual remuneration set pursuant to § 11 par. 1 is required. <sup>5</sup>The Pfandbrief bank may conclude the insurance contract in favour of the cover pool monitor and the cover pool administrator and pay the premiums.

## § 8 Duties of the cover pool monitor

(1) <sup>1</sup>The cover pool monitor shall ensure that the prescribed cover for the Pfandbriefe and claims under derivative transactions in accordance with § 4 par. 3 exists at all times; in so doing, he shall ensure that the value of the pledged properties is established in accordance with the statutory order issued on the basis of § 16 par. 4, the value of the pledged ships and ships under construction in accordance with the statutory order issued on the basis of § 24 par. 5

and the value of the aircraft lent on in accordance with the statutory order issued on the basis of § 26d par. 3. <sup>2</sup>Over and above this, he shall not be required to investigate whether the value established corresponds to the actual value.

(2) <sup>1</sup>The cover pool monitor shall ensure that the assets used as cover for the Pfandbriefe and the liabilities under derivative transactions in accordance with § 4 par. 3 are recorded in the respective cover register in accordance with § 5 par. 1. <sup>2</sup>He shall further ensure that the counterparty to the derivative transaction is notified by the Pfandbrief bank immediately a derivative has been recorded, stating the relevant cover register.

(3) <sup>1</sup>Prior to issue, the cover pool monitor shall issue for the Pfandbriefe a certificate confirming that the prescribed cover exists and has been recorded in the relevant cover register. <sup>2</sup>A reproduction of his personal signature shall suffice.

(4) <sup>1</sup>Assets recorded in the cover register may be deleted from the register only with the agreement of the cover pool monitor. <sup>2</sup>The cover pool monitor's agreement must be in writing; he may give his agreement by affixing his signature to the deleting entry in the cover register. <sup>3</sup>The agreement of the Pfandbrief 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 requisite agreement shall be deemed as not having been effected. <sup>4</sup>Par. 2 sent. 2 shall be applied correspondingly.

## § 9 (repealed)

## § 10 Powers

(1) The cover pool monitor shall be entitled to inspect the records of the Pfandbrief bank and to call for information at all times insofar as the records or information relate to the Pfandbriefe and the assets recorded in the cover register.

(2) The Pfandbrief bank shall be required to keep the cover pool monitor continually informed of the principal repayments relating to the assets recorded in the cover registers as well as of other changes relating to these assets that are of relevance to the Pfandbrief creditors and the creditors of claims under derivative transactions in accordance with § 4 par. 3.

## § 11 Fee, resolving of disputes

(1) <sup>1</sup>The cover pool monitor and his deputies shall receive an appropriate fee from the Pfandbrief bank, the amount of which shall be set by the supervisory authority, and a refund of necessary expenses. <sup>2</sup>The Pfandbrief bank is not permitted to give benefits other than those stated above.

(2) Disputes between the cover pool monitor and the Pfandbrief bank shall be resolved by the supervisory authority.

## SECTION 3

### Special Provisions concerning the Cover Assets

#### SUBSECTION 1

#### Mortgage Pfandbriefe

##### § 12 Cover assets

(1) As cover for Mortgage Pfandbriefe in accordance with § 1 par. 1 sent. 2 no. 1, only mortgages may be used insofar as they meet the requirements laid down in §§ 13 to 17 may be used.

(2) If the Pfandbrief bank has a claim to a mortgage on a property which it acquired to prevent a loss from the mortgage, the mortgage may be considered as cover only on the basis of a new calculation of the mortgage lending value in accordance with § 16.

(3) The recorded cover assets shall also include all claims that are held by the Pfandbrief bank and that are based on the economic substance of the property, in particular claims which the mortgage would encompass in the case of domestic properties in accordance with §§ 1120, 1123, 1126, 1127 and 1128 German Civil Code, to the transfer of the property or rights equivalent to real property or comparable rights and to payment of the proceeds from realization.

##### § 13 Location of the collateral

(1) <sup>1</sup>The mortgages must encumber properties, rights equivalent to real property or such rights under a foreign legal system that are comparable with rights equivalent to real property under German law. <sup>2</sup>The encumbered properties and the properties in respect of which the encumbered rights exist must be situated in a Member State of the European Union or another Contracting State to the Agreement on the European Economic Area, in Switzerland, in the United States of America, in Canada or in Japan; the total volume of the loans in states not belonging to the European Union for which it is not ensured that the preferential right of the Pfandbrief creditors in accordance with § 30 par. 1 extends to the claims of the Pfandbrief bank deriving from these lendings may not exceed ten percent of the total volume of the loans in the case of which the preferential right is ensured.

(2) It shall be permitted to lend on rights limited in time only if the scheduled repayment of the mortgage ends not more than ten years before the right expires and does not last longer than is necessary in accordance with economic principles to write off the building in the books.

##### § 14 Lending limit

Mortgages may be used as cover only up to the first 60 percent of the value of the property (mortgage lending value) established by the Pfandbrief bank on the basis of a valuation in accordance with § 16.

##### § 15 Duty to insure

(1) Throughout the duration of the loan the buildings erected on the property must be insured against risks relevant to the location and type of the property at least in the amount of the value of the buildings.

(2) If the mortgage does not by dint of law extend to the insurance claim, the loan shall be allowed only if the Pfandbrief bank receives a corresponding security by way of contract.

##### § 16 Assessing the mortgage lending value

(1) The valuation serving as the basis for the establishment of the mortgage lending value shall be conducted by a valuer who is not involved in the loan decision and who must have the requisite professional experience and knowledge in order to make mortgage lending value assessments.

(2) <sup>1</sup>The mortgage lending value must not exceed the value resulting from a prudent assessment of the future marketability of a property by taking into account the long-term sustainable aspects of the property, the normal regional market condition as well as the current and possible alternative uses. <sup>2</sup>Speculative elements must not be taken into consideration. <sup>3</sup>The mortgage lending value must not exceed a market value calculated in a transparent manner and in accordance with a recognized valuation method. <sup>4</sup>The market value is the estimated amount for which a property serving as collateral could exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.

(3) <sup>1</sup>The mortgages on building land and on new buildings under construction and not yet capable of producing income which are used as cover may not in total exceed ten percent of the total volume of the assets used to cover Mortgage Pfandbriefe or twice the liable own capital. <sup>2</sup>Mortgages on building land may not exceed one percent of the total volume of cover assets used to cover Mortgage Pfandbriefe. <sup>3</sup>Mortgages on properties which do not produce income on an ongoing basis, especially on pits and quarries, shall be excluded from use as cover. 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 also be excluded from use as cover for Mortgage Pfandbriefe if the claims do not produce income on an ongoing basis.

(4) <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 assessing the mortgage lending value and the form thereof as well as the minimum requirements as regards the valuer's qualifications. <sup>2</sup>The statutory order may facilitate the valuation of properties serving as collateral which are used primarily for residential purposes. <sup>3</sup>The umbrella organizations of the banking industry shall be heard before the statutory order is issued. <sup>4</sup>The Federal Ministry of Finance may assign this authori-

zation by statutory order to the Federal Financial Supervisory Authority. <sup>5</sup>The instructions on valuation authorized in accordance with § 13 of the Mortgage Bank Act shall be invalid when the statutory order in accordance with sent. 1 enters into force.

## § 17 (repealed)

## § 18 Land charges and foreign security interests

(1) Within the meaning of this Act, land charges and such foreign security interests as offer comparable security and entitle the creditor to satisfy his claim also by realizing the encumbered property or right within the meaning of des § 13 par. 1 sent. 1 shall rank equal with mortgages.

(2) § 12 par. 1 shall apply to land charges which serve as security for a loan claim on the basis of a negotiated agreement between the Pfandbrief bank and the respective property owner subject to the condition that the land charges together with the underlying loan claims replace the mortgages.

(3) If the Pfandbrief bank has acquired a property at a forced sale as protection against loss on a mortgage or land charge it has on the property and has had a land charge recorded in its favour in place of the cancelled mortgage or land charge, § 12 par. 2 shall be correspondingly applicable to this land charge.

## § 19 Further cover assets

(1) The cover prescribed in § 4 may also be provided

1. by equalization claims converted into bearer bonds in accordance with § 8 par. 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), amended by the Ordinance of September 26, 1995 (BGBl. I p. 1194),
2. up to, in total, 10 percent of the total volume of the Mortgage Pfandbriefe outstanding by assets of the kind defined in § 4 par. 1 sent. 2 nos. 1 and 2 and by money claims against the European Central Bank, against central banks of the Member States of the European Union or against suitable credit institutions within the meaning of § 4 par. 1 sent. 2 no. 3 inasmuch as the amount of the claims of the Pfandbrief bank is known at the time of purchase; the share of money claims against one and the same credit institution may not exceed two percent of the total volume of Mortgage Pfandbriefe mentioned in half-sentence 1,

3. up to, in total, 20 percent of the total volume of Mortgage Pfandbriefe outstanding by assets of the kind defined in § 20 par. 1 inasmuch as they are bonds; the cover assets defined in no. 2 are to be applied against the limit,
4. <sup>1</sup>by claims under derivative transactions within the meaning of § 4 par. 3 sent. 2 concluded with suitable credit institutions, investment management companies, public investment companies, financial services institutions, insurance companies, a central counterparty at a stock exchange, the German Federal Government or the Federal States inasmuch as it is ensured that the Pfandbrief bank's claims under the master contract cannot be impaired in the event of the insolvency of the Pfandbrief bank or of the other cover pools. <sup>2</sup>The transactions may only contain or simulate risks which the Pfandbrief bank can enter into also with transactions in respect of the other cover assets permissible according to this Act; excepted here are options and other derivatives if they substantiate an open short position of the Pfandbrief bank, as well as transactions which substantiate in a similar way a risk equivalent to an open short position. <sup>3</sup>The share of the Pfandbrief bank's claims under the derivative transactions included in the cover in terms of the total amount of cover assets and the share of the Pfandbrief bank's liabilities resulting from the derivative transactions included in the cover in terms of the total amount of Mortgage Pfandbriefe outstanding plus the liabilities resulting from derivative transactions must not exceed 12 percent in each case; the calculation shall be made on the basis of the net present value of the derivative transactions; claims and liabilities of the Pfandbrief bank under such derivative transactions included in cover shall not be applied against the limits according to half-sentence 1 if such derivative transactions serve solely to hedge a currency risk which cover assets or Pfandbriefe entail.

(2) In the event of § 2 par. 3 the supervisory authority may allow exceptions to the limits set down in par. 1 nos. 2 and 3.

## SUBSECTION 2

### Public Pfandbriefe

## § 20 Cover assets

(1) <sup>1</sup>Only money claims resulting from the granting of loans, from bonds or from a comparable legal transaction or other claims acknowledged in writing by the bodies covered by no. 1 letters a to f as being free from any pleas may be used to cover Public Pfandbriefe

1. when such claims are leveled directly against
  - a) domestic regional and local authorities and such public corporations and public-law institutions for which state support ("Anstaltslast") or a legally founded guarantee obligation ("Gewährträgerhaftung") or a state refinancing guarantee applies or which are legally entitled to raise fees, rates and other levies,
  - b) other Member States of the European Union or Contracting States to the Agreement on the European Economic Area and their central banks,

- c) regional governments and local authorities of the states named in letter b,
  - d) the United States of America, Japan, Switzerland and Canada and their central banks insofar as their risk weighting has been assigned to credit quality step 1 according to Table 1 of Annex VI of Directive 2006/48/EC in accordance with the assignment conducted by the competent national authorities of the rating by recognized international rating agencies,
  - e) regional governments and local authorities of the states covered by letter d insofar as the respective national authority has given them a rank equal to the central government or insofar as they have been assigned a risk weighting equivalent to credit quality step 1 according to Table 3 of Annex VI of Directive 2006/48/EC in accordance with the national regulations which have been enacted to implement the framework agreement “International Convergence of Capital Measurement and Capital Standards” of the Basel Committee on Banking Supervision of June 2004 as being of equal status to Directive 2006/48/EC; allocation to credit quality step 1 shall be based on the ratings awarded by recognized international rating agencies,
  - f) the European Central Bank as well as multilateral development banks and international organizations within the meaning of Annex VI nos. 1, 4 and 5 of Directive 2006/48/EC,
  - g) public sector entities of a Member State of the European Union or of another Contracting State to the Agreement on the European Economic Area,
  - h) public sector entities within the meaning of Article 4 no. 18 of Directive 2006/48/EC of the states named under letter d, insofar as they meet the requirements set forth in letter e, or
2. in respect of which claims one of the bodies named in no. 1 letters a to f or an export credit agency in accordance with Article 2 of Directive 98/29/EC of the Council of 7 May 1998 on harmonization of the main provisions concerning export credit insurance for transactions with medium and long-term cover (Official Journal EC no. L 148 p. 22) which meets the requirements to be met by a public sector entity in accordance with no. 1 letter g has assumed the guarantee. A guarantee shall be given inasmuch as the holder of the claim has on the basis of a law, an ordinance, a statute or a legal transaction a claim against the guarantor to the effect that the latter shall, in the event of non-payment by the debtor, provide such funds as are necessary to meet the obligation. The guarantor must not be entitled towards the Pfandbrief bank to assert pleas as a result of a legal relationship with third parties or to disengage from his obligations in a one-sided manner, or
3. when such claims are owed
- a) by a central government, central bank, regional or local administration of one of the states named under no. 1 letter d,
  - b) by a public sector entity of one of the states named under no. 1 letter d,
  - c) by a multilateral development bank or
  - d) by an international organization

or guaranteed by the institutions named in letters a, c or d, insofar as the debtor or guarantor is allocated to credit quality step 2 and was allocated to credit quality step 1 at the time the concrete claim was entered in the cover register, and the total amount of these claims does not exceed 20 percent of the total volume of the Pfandbrief bank's Public Pfandbriefe outstanding.

<sup>2</sup>The total volume of claims against debtors in non-European Union states in the case of which it is not ensured that the Public Pfandbrief creditors' preferential right in accordance with § 30 par. 1 extends to the Pfandbrief bank's claims deriving from these claims may not exceed 10 percent of the total volume of the claims in the case of which the preferential right is ensured.

**(2)** The cover may also be provided

1. by the assets defined in § 19 par. 1 no. 1;
2. up to 10 percent of the total volume of Public Pfandbriefe outstanding by money claims against suitable credit institutions within the meaning of § 4 par. 1 sent. 2 no. 3 inasmuch as the amount of the claims of the Pfandbrief bank is known at the time of purchase; the share of money claims against one and the same credit institution may not exceed two percent of the total volume of the Public Pfandbriefe outstanding;
3. by the assets defined in § 19 par. 1 no. 4 under the conditions and restrictions mentioned there subject to the condition that the total volume of the Mortgage Pfandbriefe outstanding shall be replaced by the total volume of the Public Pfandbriefe outstanding.

**(3)** In the case of § 2 par. 3 the supervisory authority may allow exceptions to the restrictions set down in par. 2.

**(4)** The recorded cover assets shall also range over all claims that are held by the Pfandbrief bank and that are based on the economic substance of the cover asset, in the case of a mortgage guaranteed in accordance with par. 1 sent. 1 no. 2 in particular also the claims named in § 12 par. 3.

### **SUBSECTION 3**

#### **Ship Pfandbriefe**

##### **§ 21 Cover assets**

<sup>1</sup>Only loan claims which are secured by ship mortgages may be used as cover for Ship Pfandbriefe insofar as they meet the requirements set forth in §§ 22 to 24. <sup>2</sup>In the event that a loan claim is used only partially as cover, the Pfandbrief bank shall document the details in a lucid manner.

## § 22 Lending limit

- (1) The loan is limited to ships and to ships under construction which are recorded in a public register.
- (2) <sup>1</sup>The loan may not exceed the first 60 percent of the value of the ship (ship mortgage lending value) or of the ship under construction established by the Pfandbrief bank on the basis of a valuation in accordance with § 24. <sup>2</sup>It may only be granted in the form of instalment loans, whereby the paying off of the loan shall as a rule be spread equally over the individual years; the agreement on diminishing repayment instalments is not detrimental. <sup>3</sup>Where it is agreed in respect of a loan that the loan shall not be completely repaid by repayment instalments in accordance with sent. 2 by the end of the loan maturity, but by an additional final instalment to be made at the end of the loan maturity, this shall not be deemed as a case of repayment by varying instalments if the final instalment does not exceed the amount which on the basis of the payment in equal instalments agreed on for the loan could be repaid by the end of the twentieth year of the useful life of the ship. <sup>4</sup>In individual cases the supervisory authority may allow further exceptions to the provisions laid down in sentences 1 and 2 if they seem justified given the type of the ship or ship under construction, the borrower's financial situation or additional collateral.
- (3) (repealed)
- (4) <sup>1</sup>The loan may be extended until the end of the twentieth year of the useful life of the ship at the latest unless a shorter useful life is to be expected. <sup>2</sup>Moreover, the supervisory authority may allow further exceptions if the requirements of par. 2 sent. 4 are met. <sup>3</sup>A deferral granted to the borrower in consequence of which the permissible maximum maturity of the period for the loan would be exceeded is permissible only with the cover pool monitor's approval. <sup>4</sup>Where several ships or ships under construction are lent on by a loan claim secured by ship mortgages, the loan claim shall only be suitable to serve as cover provided that, if the loan claim were divided among the individual ships and ships under construction, the individual loan claims would be suitable to serve as cover.
- (5) <sup>1</sup>Ships or ships under construction which are registered abroad may be lent on if, under the laws of the state in whose register the ship or the ship under construction is recorded,
1. a right in rem can be created on ships and ships under construction which is recorded in a public register,
  2. the right in rem grants the creditor a security comparable to a ship mortgage under German law, in particular the right to seek satisfaction of the secured loan claim from the ship or the ship under construction,
  3. legal action is not made significantly more difficult for creditors belonging to another state compared to nationals of that state.

<sup>2</sup>The total volume of the loans in accordance with sent. 1 in non-European Union states for which it is not ensured that the preferential right of the Ship Pfandbrief creditors in accordance with § 30 par. 1 extends to the Pfandbrief bank's claims deriving from these loans, may not exceed 20 percent of the total volume of the claims in the case of which the preferential right is ensured. <sup>3</sup>If the laws of the state in whose register the ship or the ship under construction is recorded state that the right in rem is created without an entry being made in a public register, but that it may be recorded in such a register to safeguard the creditor's rights against third parties, the loan shall be admitted only subject to the condition that the Pfandbrief bank has such an entry made in the public register without delay. <sup>4</sup>The loan shall as a rule be admissible only against a first-ranking lien; par. 2 sent. 4 shall apply *mutatis mutandis*.

(6) The recorded cover assets shall also range over all claims that are held by the Pfandbrief bank and that are based on the economic substance of the ship or ship under construction, in particular claims which the ship mortgage would range over in the case of ships and ships under construction recorded in the German Shipping Register in accordance with §§ 31 and 32 of the Law on Rights over Registered Ships and Ships under Construction, such as claims from lease or charter, claims in respect of the transfer of the ship or ship under construction and claims to payment of the proceeds from realization.

## § 23 Insurance

- (1) <sup>1</sup>The ship or the ship under construction must be insured throughout the duration of the loan at least in the amount of 110 percent of the loan claims outstanding at any given time plus any senior or equal-ranking ship mortgages of third parties according to the business conditions of the Pfandbrief bank. <sup>2</sup>The insurer must have undertaken not to assert pleas against the Pfandbrief bank on the basis of § 36 par. 2 no. 2 of the Law on Rights over Registered Ships and Ships under construction or, in the case of loans on ships and ships under construction registered abroad, not to assert the corresponding pleas.
- (2) The Pfandbrief bank shall inform the insurer of the loan without delay.
- (3) <sup>1</sup>Inasmuch as the insurer satisfies the Pfandbrief bank on the basis of the undertaking assumed in accordance with par. 1, the ship mortgage shall be transferred to the insurer. <sup>2</sup>The transfer cannot be enforced to the detriment of the Pfandbrief bank or of an equal-ranking or junior ship mortgage creditor towards whom the insurer's undertaking to perform continues to exist.
- (4) If the ship mortgage does not by operation of law extend to the insurance claim, the loan shall be allowed only if the Pfandbrief bank receives a corresponding security by way of contract.

## § 24 Assessing the ship mortgage lending value

(1) The valuation serving as the basis for the establishment of the ship mortgage lending value shall be conducted by a valuer who is not involved in the loan decision and who must have the requisite professional experience and knowledge in order to make mortgage lending value assessments.

(2) <sup>1</sup>The ship mortgage lending value must not exceed the value resulting from a prudent valuation of the future saleability of the ship and taking into consideration the long-term, permanent features of the property, the market situation as well as the present and possible alternative uses. Speculative elements must not be taken into consideration. <sup>2</sup>The ship mortgage lending value must not exceed a market value calculated in a transparent manner and in accordance with a recognized valuation method. § 16 par. 2 sent. 4 shall apply *mutatis mutandis*.

(3) Paragraphs 1 and 2 shall apply *mutatis mutandis* to the valuation of a ship under construction.

(4) The claims secured by ship mortgages on ships under construction, which are assigned to cover Ship Pfandbriefe may not in total exceed 20 percent of the total volume of the ship mortgages used to cover Ship Pfandbriefe.

(5) <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 assessing the ship mortgage lending value and the form thereof as well as the minimum requirements as regards the valuer's qualifications. <sup>2</sup>The umbrella organizations of the banking industry shall be heard before the statutory order is issued. <sup>3</sup>The Federal Ministry of Finance may assign this authorization by statutory order to the Federal Financial Supervisory Authority.

## § 25 Start of repayment by instalments

The start of repayment by instalments may be postponed by a period that must not exceed two years; the supervisory authority may for special reasons approve the extension of this period by up to five years for individual loan claims.

## § 26 Further cover assets

(1) The cover prescribed in § 4 may also be provided

1. by payment obligations or acknowledgements of debt within the meaning of §§ 780 and 781 of the German Civil Code which are secured by ship mortgages, inasmuch as they are based on loan claims which meet the requirements laid down §§ 22 to 24; insofar as

the loan claims only partially meet the aforesaid requirements, they may only be used as cover to that extent; § 21 par 2 shall apply *mutatis mutandis*;

2. by assets of the kind defined in § 19 par. 1 no. 1;
3. up to 10 percent of the total volume of the Ship Pfandbriefe outstanding, by assets of the kind defined in § 4 par. 1 sent. 2 nos. 1 and 2 as well as by money claims against the European Central Bank, against central banks of the Member States of the European Union or against suitable credit institutions within the meaning of § 4 par. 1 sent. 2 no. 3 inasmuch as the amount of the claims of the Pfandbrief bank is known at the time of purchase; the share of money claims against one and the same credit institution may not exceed two percent of the total volume of the Ship Pfandbriefe mentioned in half-sentence 1;
4. up to, in total, 20 percent of the total volume of Ship Pfandbriefe outstanding by assets of the kind defined in § 20 par. 1 inasmuch as they are bonds; the cover assets defined in no. 3 are to be applied against the limit;
5. <sup>1</sup>by the assets defined in § 19 par. 1 no. 4 under the conditions and restrictions mentioned therein subject to the proviso that the total volume of the Mortgage Pfandbriefe outstanding shall be replaced by the total volume of the Ship Pfandbriefe outstanding.

(2) In the event of § 2 par. 3 the supervisory authority may allow exceptions to the limits set down in par. 1 nos. 3 and 4.

## SUBSECTION 4

### Aircraft Pfandbriefe

## § 26a Cover assets

(1) <sup>1</sup>Only claims secured by registered liens in accordance with § 1 Law on Rights in Aircraft (LuftFzRG) or by foreign aircraft mortgages may be used as cover for Aircraft Pfandbriefe insofar as they meet the requirements set forth in §§ 26b to 26f. <sup>2</sup>In the event that a loan claim is used only partially as cover the Pfandbrief bank shall document the details in a lucid manner.

## § 26b Lending limit

(1) The loan is limited to aircraft within the meaning of § 1 par. 2 sent. 1 no. 1 of the German Air Traffic Act (LuftVG) which are recorded in a public register.

(2) <sup>1</sup>The loan may not exceed the first 60 percent of the value of the aircraft (aircraft lending value) established by the Pfandbrief bank on the basis of a valuation in accordance with § 26d. <sup>2</sup>Appropriate measures shall be taken to ensure that the registered lien or the foreign aircraft

mortgage also encompasses the engines. <sup>3</sup>The re-registration of aircraft and the resultant implications on the registered lien or foreign aircraft mortgage shall be monitored; appropriate measures shall be taken to ensure that the requirements set forth in par. 4 are met on a permanent basis. <sup>4</sup>The loan may only be granted in the form of instalment loans, whereby the paying off of the loan shall as a rule be spread equally over the individual years; the agreement on diminishing repayment instalments is not detrimental. <sup>5</sup>Where it is agreed in respect of a loan that the loan shall not be completely repaid by repayment instalments in accordance with sent. 4 by the end of the loan maturity, but by an additional final instalment to be made at the end of the loan maturity, this shall not be deemed to be a case of repayment by varying instalments if the final instalment does not exceed the amount which, on the basis of the payment in equal instalments agreed on for the loan, could be repaid by the end of the twentieth year of the useful life of the aircraft. <sup>6</sup>The supervisory authority may in individual cases permit further exceptions from the provisions set forth in sentences 1 and 4 if the specific nature of the aircraft to be lent on, the financial circumstances of the borrower or additional collateral appear to justify them.

**(3)** <sup>1</sup>The loan may have a duration not extending beyond the end of the twentieth year of the useful life of the aircraft unless a shorter useful life is to be expected. <sup>2</sup>Moreover, the supervisory authority may allow further exceptions if the requirements of par. 2 sent. 6 are met. <sup>3</sup>A deferment granted to the borrower in consequence of which the permissible maximum maturity of the period for the loan would be exceeded is permissible only with the cover pool monitor's approval.

**(4)** <sup>1</sup>Aircraft which are registered abroad may be lent on if under the laws of the state in whose register the aircraft is recorded

1. a right in rem can be created on aircraft which is recorded in a public register,
2. the right in rem grants the creditor a security comparable to a registered lien under German law, in particular the right to seek satisfaction of the secured loan claim from the aircraft, and
3. legal action is not made significantly more difficult for creditors belonging to another state compared to nationals of that state.

<sup>2</sup>The total volume of the loans in accordance with sent. 1 in non-European Union states for which it is not ensured that the preferential right of the Aircraft Pfandbrief creditors in accordance with § 30 par. 1 extends to the Pfandbrief bank's claims deriving from these loans may not exceed 20 percent of the total volume of the claims in the case of which the preferential right is ensured. <sup>3</sup>If the laws of the state in whose register the aircraft is recorded state that the right in rem is created without an entry being made in a public register, but that it may be recorded in such a register to safeguard the creditor's rights against third parties, the loan shall be admitted only subject to the condition that the Pfandbrief bank has such an entry made in the public register without delay. <sup>4</sup>The loan shall as a rule be admissible only against a first-ranking lien; par. 2 sent. 4 shall apply *mutatis mutandis*.

**(5)** The registered cover assets shall also range over all claims that are held by the Pfandbrief bank and that are based on the economic substance of the aircraft, in particular claims which the registered lien or the foreign aircraft mortgage would encompass in accordance with §§ 31 and 32 of the Law on Rights In Aircraft, such as claims from lease or charter, claims in respect of the transfer of the aircraft and claims to payment of the proceeds from realization.

### **§ 26c Insurance**

**(1)** <sup>1</sup>The aircraft must be insured throughout the duration of the loan at least in the amount of 110 percent of the loan claims outstanding at any given time plus any senior or equal-ranking registered liens of third parties according to the business conditions of the Pfandbrief bank. <sup>2</sup>The insurer must have undertaken not to assert pleas against the Pfandbrief bank in respect of conduct by the insurance holder or insured party substantiating exemption from the payment of benefits in accordance with § 36 sent. 1 of the Law on Rights in Aircraft or, in the case of loans on aircraft registered abroad, not to assert the corresponding pleas.

**(2)** The Pfandbrief bank shall inform the insurer of the loan without delay.

**(3)** <sup>1</sup>Inasmuch as the insurer satisfies the Pfandbrief bank on the basis of the undertaking assumed in accordance with par. 1, the registered lien passes over to the insurer. <sup>2</sup>The transfer cannot be asserted to the detriment of the Pfandbrief bank or of an equal-ranking or junior registered lien creditor towards whom the insurer's undertaking to perform continues to exist.

**(4)** If the registered lien does not by operation of law extend to the insurance claim, the loan shall be allowed only if the Pfandbrief bank receives a corresponding security by way of contract.

### **§ 26d Assessing the aircraft mortgage lending value**

**(1)** The valuation serving as the basis for the establishment of the aircraft mortgage lending value shall be conducted by a valuer who is not involved in the loan decision and who must have the requisite professional experience and knowledge in order to make aircraft mortgage lending value assessments.

**(2)** <sup>1</sup>The aircraft mortgage lending value must not exceed the value resulting from a prudent valuation of the future saleability of the aircraft and taking into consideration the long-term, permanent features of the property, the market situation as well as the present and possible alternative uses. <sup>2</sup>Speculative elements must not be taken into consideration. <sup>3</sup>The aircraft mortgage lending value must not exceed a market value calculated in a transparent manner and in accordance with a recognized valuation method. <sup>3</sup>§ 16 par. 2 sent. 4 shall apply *mutatis mutandis*.

(3) <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 assessing the aircraft mortgage lending value and the form thereof as well as the minimum requirements as regards the valuer's qualifications. <sup>2</sup>The umbrella organizations of the banking industry shall be heard before the statutory order is issued. <sup>3</sup>The Federal Ministry of Finance may assign this authorization by statutory order to the Federal Financial Supervisory Authority.

#### § 26e Start of repayment by instalments

The start of repayment by instalments may be postponed by a period that must not exceed two years; by approval of the supervisory authority this period may be expanded for special reasons by up to five years for individual loan claims.

#### § 26f Further cover assets

- (1) The cover prescribed in § 4 may also be provided
1. by payment obligations or acknowledgements of debt within the meaning of §§ 780 and 781 of the German Civil Code which are secured by registered liens, inasmuch as they are based on loan claims which meet the requirements laid down §§ 26b to 26d; insofar as the loan claims only partially meet the aforesaid requirements, they may only be used as cover to that extent; § 21 par 2 shall apply *mutatis mutandis*;
  2. by assets of the kind defined in § 19 par. 1 no. 1;
  3. up to 10 percent of the total volume of the Aircraft Pfandbriefe outstanding by assets of the kind defined in § 4 par. 1 sent. 2 nos. 1 and 2 as well as by money claims against the European Central Bank, against central banks of the Member States of the European Union or against suitable credit institutions within the meaning of § 4 par. 1 sent. 2 no. 3 inasmuch as the amount of the claims of the Pfandbrief bank is known at the time of purchase; the share of money claims against one and the same credit institution may not exceed two percent of the total volume of the Aircraft Pfandbriefe mentioned in half-sentence 1;
  4. up to, in total, 20 percent of the total volume of Aircraft Pfandbriefe outstanding by assets of the kind defined in § 20 par. 1 inasmuch as they are bonds; the cover assets defined in no. 3 are to be applied against the limit;
  5. by the assets defined in § 19 par. 1 no. 4 under the conditions and restrictions mentioned therein subject to the proviso that the total volume of the Mortgage Pfandbriefe outstanding shall be replaced by the total volume of the Aircraft Pfandbriefe outstanding.
- (2) In the event of § 2 par. 3 the supervisory authority may allow exceptions to the limits set down in par. 1 nos. 3 and 4.

## SECTION 4

### GENERAL PROVISIONS CONCERNING PFANDBRIEF BUSINESS

#### § 27 Risk management

- (1) <sup>1</sup>The Pfandbrief bank must have a suitable risk management system for Pfandbrief business. <sup>2</sup>The system must ensure the identification, assessment, control and monitoring of all risks related thereto such as, in particular, counterparty risks, interest rate, currency and other market price risks, operational risks and liquidity risks. <sup>3</sup>Moreover,
1. the concentration of risk must be limited by a limit system,
  2. a procedure must be in place which ensures that when exposure to risk is greatly increased the risk will be reduced; the procedure must include the forwarding of information to the decision makers in good time,
  3. the risk management system must be adjusted to changing conditions at short notice and subjected to review at least one a year,
  4. a risk report compiled in accordance with this provision must be presented to the Management Board at appropriate intervals, at least quarterly.

<sup>4</sup>The risk management system shall be documented in detail and in a lucid manner.

(2) <sup>1</sup>Before engaging in business in new products, types of business or in new markets, the Pfandbrief bank shall conduct and document an exhaustive analysis of the risks they entail and of the resultant requirements in respect of the risk management system. <sup>2</sup>The Pfandbrief bank may not include the assets in cover until it has obtained sound expert knowledge in respect of these new activities, and in the case of activities on new markets in the field of mortgage lending not before the end of two years after taking them up. <sup>3</sup>The existence of sound expert knowledge shall be set down in detail in writing.

#### § 28 Transparency provisions

- (1) <sup>1</sup>The Pfandbrief bank shall publish on a quarterly basis the following information referring to the end of the quarter in each case:
1. the respective total volume of the Mortgage Pfandbriefe, Public Pfandbriefe, Ship Pfandbriefe and Aircraft Pfandbriefe outstanding as well as of the corresponding cover pools in the amount of the nominal value, the net present value and the risk-adjusted net present value stipulated in the statutory order in accordance with § 4 par. 6,
  2. the maturity structure of the Mortgage Pfandbriefe, Public Pfandbriefe, Ship Pfandbriefe and Aircraft Pfandbriefe outstanding as well as the fixed-interest periods of the corresponding cover pools, in bands of up to one year, of more than one year up to two years, from two years up to three years, of more than three years up to four years, of more than four years up to five years, of more than five years up to ten years, and of more than ten years respectively, and

3. the share of derivative transactions included in the cover pools in accordance with § 19 par. 1 no. 4 sent. 3, also in conjunction with § 20 par. 2 no. 3 and § 26 par. 1 no. 5 as well as § 26f par. 1 no. 5, in the case of a negative total value of the derivative transactions instead of the share of the cover pools the share of the liabilities to be covered, and
4. the total amount in each case of the assets in accordance with § 19 par. 1 nos. 2 and 3, in accordance with § 20 par. 2 no. 2, in accordance with § 26 par. 1 nos. 3 and 4 and in accordance with § 26f par. 1 nos. 3 and 4.

<sup>2</sup>The information shall be included in the notes to the annual accounts and published on the Pfandbrief bank's internet website for the duration of two years. <sup>3</sup>The information on the first three quarters of each business year shall be published on the internet website within one month of the end of the respective quarter; the information on the fourth quarter of each business year shall be published within two months after the end of the quarter.

**(2)** <sup>1</sup>The following additional information shall be given for the total volume of claims used to cover Mortgage Pfandbriefe:

1. the distribution with the amounts assigned as cover in their nominal values
  - a) according to their amount in tranches of up to 300,000 Euros, of more than 300,000 Euros to 5 million Euros and of more than 5 million Euros,
  - b) according to the states in which the real property collateral is located, in each case
  - c) according to properties for commercial and residential use, and according to apartments, single-family houses, multiple-family dwellings, office buildings, retail buildings, industrial buildings, other commercially used buildings, new buildings under construction and not yet capable of producing a yield as well as building land,
2. the total amount of the payments in arrears for at least 90 days in respect of these claims and their distribution by states in accordance with no. 1 letter b as well as
3. solely in the notes to the annual accounts
  - a) the number of foreclosure and receivership proceedings pending on the date of closing the accounts, as well as the number of foreclosures during the financial year,
  - b) the number of cases in which the Pfandbrief bank had to take over properties to prevent losses on mortgages during the financial year,
  - c) the total amount of the arrears on the interest payable by mortgagors, insofar as these arrears have not already been written off in the previous years.

<sup>2</sup>The information referred to in sent. 1 no. 3 letters a to c shall be shown separately for properties for commercial use and those for residential purposes.

**(3)** The following additional information shall be given for the total volume of claims used to cover Public Pfandbriefe:

1. distributed among the individual states in which the borrowers and, in the case of a full guarantee, the guaranteeing bodies have their head office, the amounts assigned as cover in their nominal values, broken down in addition by type according to whether the claim is leveled against the state, regional authorities, local authorities or other debtors or is fully guaranteed by same in each case.
2. the total amount of the payments on these claims that are at least 90 days in arrears and their regional distribution in accordance with no. 1.

**(4)** <sup>1</sup>The following additional information shall be given for the total volume of claims used to cover Ship Pfandbriefe and Aircraft Pfandbriefe:

1. the distribution with the amounts assigned as cover in their nominal values
  - a) according to their amount in tranches of up to 500,000 Euros, of more than 500,000 Euros to 5 million Euros and of more than 5 million Euros,
  - b) according to the states in which the pledged ships and ships under construction are registered, broken down according to sea-going vessels and inland waterway vessels, and
  - c) according to the states in which the aircraft lent on are registered, and
2. solely in the notes to the annual accounts
  - a) the number of foreclosure proceedings of ships, ships under construction or aircraft that were pending on the date of closing the accounts, as well as the number of foreclosures completed during the financial year,
  - b) the number of cases in which the bank had to take over ships, ships under construction or aircraft to prevent losses on ship mortgages, registered liens or foreign aircraft mortgages during the financial year,
  - c) the total amount of the arrears on the interest payable by borrowers insofar as these arrears have not already been written off in the previous years.

<sup>2</sup>The information referred to in sent. 1 no. 2 letters a to c shall be shown separately for sea-going vessels and inland waterway vessels.

**(5)** For all information given in accordance with paragraphs 1 to 4, as from January 1, 2007, the corresponding value of the previous year in each case shall also be stated in the publications in accordance with par. 1.

## **SECTION 5**

### **Protection against Enforcement; Separation Principle in the Event of the Pfandbrief Bank's Insolvency**

#### **§ 29 Protection against enforcement, seizure and set-off**

<sup>1</sup>Seizure and foreclosure in respect of all the assets recorded in a cover register including the assets within the meaning of § 30 par. 3 shall only occur due to the claims arising from the respective Pfandbriefe and the claims arising from the derivative transactions recorded in the relevant cover register. <sup>2</sup>§ 394 of the German Civil Code shall apply *mutatis mutandis*.

#### **§ 30 Separation principle in the event of the Pfandbrief bank's insolvency, appointment of the cover pool administrator**

**(1)** <sup>1</sup>The assets entered in the cover registers including the assets as defined in par. 3 as well as the minimum reserve maintained with the Deutsche Bundesbank, inasmuch as it refers to Pfandbriefe, constitute assets which are separate from the Pfandbrief bank's general assets

and which are not part of the insolvency estate in the event that insolvency proceedings are opened in respect of the Pfandbrief bank's assets (insolvency-free assets).<sup>2</sup>The claims of the Pfandbrief creditors are not affected by the opening of insolvency proceedings in respect of the Pfandbrief bank's assets; the Pfandbrief creditors' right pursuant to par. 6 sent. 4 remain intact.<sup>3</sup>These parts of the Pfandbrief banks as are named in sentences 1 and 2 continue to exist outside of the insolvency proceedings for every Pfandbrief category as a Pfandbriefbank with limited business activity ("Pfandbriefbank mit beschränkter Geschäftstätigkeit").<sup>4</sup>The purpose of each Pfandbrief bank with limited business activity is the complete and punctual fulfillment of the Pfandbrief liabilities as well as the due administration of the assets necessary to this end which are not included in insolvency proceedings.<sup>5</sup>The management of each Pfandbrief bank with limited business activity shall be the responsibility of the cover pool administrator appointed in accordance with par. 2 or, where two cover pool administrators are appointed, the responsibility of both of them jointly.<sup>6</sup>Each Pfandbrief bank with limited business activity is liable with the associated assets not included in insolvency proceedings for the Pfandbrief liabilities and for the claims pursuant to par. 3 sentences 3 and 4 and to paragraphs 4 and 7 as well as for the liabilities arising from the transactions by the cover pool administrator.

(2) <sup>1</sup>In the event of par. 1 the court at the Pfandbrief 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 all the recorded assets including the assets within the meaning of par. 3 shall be transferred to the cover pool administrator.<sup>3</sup>Should the Pfandbrief bank have disposed of an asset recorded in the cover register after the cover pool administrator was appointed, such disposal shall be invalid; §§ 892 and 893 of the German Civil Code and §§16 and 17 of the Law on Rights in Aircraft shall remain unaffected.<sup>4</sup>When the Pfandbrief bank has made a disposition on the day of the appointment of the cover pool administrator, it shall be assumed that the disposition was made after the appointment.<sup>5</sup>The cover pool administrator may carry out legal transactions in respect of the respective Pfandbrief bank with limited business activity in accordance with par. 1 insofar as this is necessary for the proper administration of the cover pools in the interest of the complete and punctual fulfillment of the Pfandbrief liabilities; in particular he may procure liquid funds in order to repay the outstanding Pfandbriefe on time.<sup>6</sup>He represents the Pfandbrief bank in and out of court in respect of this sphere of business.<sup>7</sup>Subject to the conditions stipulated in sent. 5, the cover pool administrator shall also be entitled to perform other activities with regard to the administration of the cover pools, in particular to create a new funding register within the meaning of §§ 22a to 22o of the German Banking Act and to use an existing funding register of the Pfandbrief bank.<sup>8</sup>The restrictions of § 19 par. 1 nos. 2 to 4, of § 20 par. 2 nos. 2 and 3, and of § 26 par. 1 nos. 3 to 5 and of § 26f par. 1 nos. 3 to 5 shall not apply.

(3) <sup>1</sup>The assets recorded in the cover register shall be subject to the right of management and disposition of the cover pool administrator also insofar as they are not, pursuant to § 5 par. 1a, designated as cover for the Pfandbrief bank's Pfandbriefe.<sup>2</sup>In particular, the cover pool administrator shall collect claims according to their maturity and liquidate mortgages that are ripe for liquidating.<sup>3</sup>After deducting appropriate management costs he shall assign to the creditors assets held on a fiduciary basis within the meaning of § 5 par. 1a sent. 4 and 5 and, moreover, pay over that portion to the insolvent estate which would be attributed to the shares if there had been separate claims or individual mortgages.<sup>4</sup>The creditors mentioned in

sentence 3 and the insolvency administrator may each demand that claims or mortgages be divided according to the rank of their respective rights; the costs shall be borne by the creditors or, insofar as the insolvency administrator demands the division, by the insolvent estate.

(4) <sup>1</sup>The insolvency administrator may demand at any time that registered assets which are not subject to management in a fiduciary capacity and which will obviously not be necessary as cover for the respective Pfandbrief category including the statutory overcollateralization 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 Pfandbrief bank's head office may appoint a cover pool administrator at the request of the supervisory authority even before the insolvency proceedings are opened in respect of the Pfandbrief bank's assets if the requirements of § 46 par. 1 of the German Banking Act are met.<sup>2</sup>The provisions concerning the cover pool administrator appointed in accordance with par. 2 sent. 1 shall apply *mutatis mutandis* 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 individual cover pools according to § 46 of the German Banking Act.<sup>2</sup>In the event of a default or an over-indebtedness of a cover pool, separate insolvency proceedings shall be held in respect of it; the petition to open insolvency proceedings may only be submitted by the supervisory authority.<sup>3</sup>Par. 4 shall apply *mutatis mutandis*.<sup>4</sup>In the insolvency proceedings in respect of the remaining assets of the Pfandbrief 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 sent. 1, § 190 par. 1 and 2 as well as § 192 of the Insolvency Statute (InsO) shall apply *mutatis mutandis*.<sup>5</sup>Assets within the meaning of paragraph 3 which belong to the insolvent estate of the Pfandbrief bank entitle for separate settlement in insolvency proceedings in respect of the cover pool in accordance with § 47 of the Insolvency Statute.<sup>6</sup>Both the cover pool administrator and the insolvency administrator acting in the insolvency proceedings in respect of the cover pools shall be entitled to register the claims mentioned in sent. 4 of the Pfandbrief creditors in the insolvency proceedings in respect of the Pfandbrief bank's assets.<sup>7</sup>This shall not affect the Pfandbrief creditors' right to reject or retract the registration.

(7) Creditors of claims under derivative transactions in accordance with § 4 par. 3 shall rank equally with Pfandbrief creditors.

### § 31 Duties and powers of the cover pool administrator

(1) <sup>1</sup>The cover pool administrator shall be supervised by the court at the Pfandbrief bank's head office.<sup>2</sup>In particular, the court may at any time request from him certain information or a statement on the current situation and the management.<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 cover pool monitor, the cover pool administrator shall

assume the duties which the Pfandbrief bank must carry out in accordance with this Act and the German Banking Act in connection with the management of the cover assets.

(2) <sup>1</sup>The cover pool administrator shall receive a certificate concerning his appointment, which he must return 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 the fact forthwith in the Federal Gazette. <sup>3</sup>The cover pool administrator's appointment and removal shall be entered in the Register of Companies per curiam, or in the event of § 33 par. 5 in the Register of Cooperative Societies. <sup>4</sup>The entries shall not be announced. <sup>5</sup>The provisions of § 15 of the German 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 the right and the circumstances the Pfandbrief creditors may be at a disadvantage if no entry were made. <sup>2</sup>The cover pool administrator shall apply for the entry with the Land Register office. <sup>3</sup>If mortgages in the case of which the appointment of the cover pool administrator has been entered are removed from the register, the cover pool administrator must apply for the deletion of the entry of the cover pool administrator's appointment with the Land Register office. In the case of registered rights over ships, the Land Register shall be replaced by the Shipping Register, and in the case of registered rights over ships under construction the Shipbuilding Register; the Land Register office shall be replaced by the register court.

(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 proportionally out of the assets recorded in the cover registers; the relation of the nominal value of each individual cover pool to the nominal value of all the cover pools of the Pfandbrief bank shall prevail. <sup>3</sup>At the cover pool administrator's request the court at the Pfandbrief bank's head office shall establish the remuneration and expenses. <sup>4</sup>The right to appeal on a point of law shall be excluded. <sup>5</sup>The final and absolute judicial decision results in judicial enforcement pursuant to the Code of Civil Procedure (ZPO).

(5) <sup>1</sup>The cover pool administrator shall monitor the recoverability of the individual cover pools at regular intervals; § 4 par. 4 shall apply *mutatis mutandis* <sup>2</sup>The supervisory authority may order a special audit. <sup>3</sup>The resulting costs incurred by the supervisory authority shall be borne proportionally out of the assets recorded in the registers; par. 4 sent. 2 half-sentence 2 shall apply *mutatis mutandis*.

(6) <sup>1</sup>The cover pool administrator shall manage the assets with the due care of an orderly and conscientious manager. <sup>2</sup>If he violates his duties he shall be liable to pay damages to the Pfandbrief bank. <sup>3</sup>Section 45c par. 7 of the German Banking Act shall apply *mutatis mutandis*.

(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 Pfandbrief bank or the management of the cover assets.

(8) <sup>1</sup>The cover pool administrator shall be entitled to make use of staff and material of the Pfandbrief bank in the performance of his tasks. <sup>2</sup>He shall compensate the costs incurred in this respect to the insolvent estate.

(9) <sup>1</sup>The cover pool administrator may collect and use personal data insofar as this is necessary in the performance of his tasks. <sup>2</sup>§ 203 of the German Criminal Code (StGB) does not present an obstacle to the transfer of information which the cover pool administrator needs to perform his tasks.

### § 32 Transfer of the cover pools and 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 cover register, including assets within the meaning of § 30 par. 3 and the liabilities from Pfandbriefe as an entirety to another Pfandbrief bank in accordance with the following provisions.

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

1. the company name and the head office of the transferring Pfandbrief bank and of the Pfandbrief bank taking delivery,
2. the agreement on the transfer of the assets recorded in the cover register and of the liabilities from Pfandbriefe as an entirety and, if applicable, of a consideration,
3. the exact denomination of the assets to be transferred and of the liabilities from Pfandbriefe.

(3) <sup>1</sup>Inasmuch 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 Pfandbriefe in accordance with par. 2 no. 3. <sup>2</sup>§ 28 of the Land Register Code, § 36 of the Shipping Register Code and § 87 of the Law on Rights in Aircraft shall be observed. <sup>3</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.

### § 33 Entry of the transfer in the Register of Companies

(1) <sup>1</sup>The cover pool administrator and the representing body of the Pfandbrief bank taking delivery shall apply for entry of the transfer in the Register of Companies at the respective Pfandbrief 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 Pfandbrief bank's head office once it has been entered in the Register of Companies of the

Pfandbrief bank taking delivery. <sup>2</sup>The entry in the Register of Companies at the head office of the Pfandbrief bank taking delivery shall be made with a note to the effect that the transfer only takes effect upon entry in the Register of Companies at the transferring Pfandbrief bank's head office.

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

(4) The court at the head office of each of the Pfandbrief banks involved in the transfer shall officially announce the respective executed entry of the transfer with its entire content in the Federal Gazette.

(5) Inasmuch as the Pfandbrief bank is a registered cooperative within the meaning of § 1 par. 1 of the German Cooperative Societies Act (GenG), the Register of Companies shall be replaced by the Register of Cooperative Societies in the event of the application of paragraphs 1 to 4.

### § 34 Delivery of cover assets and liabilities

(1) <sup>1</sup>Upon entry of the transfer in the Register of Companies at the transferring Pfandbrief bank's head office, the assets and Pfandbrief liabilities detailed in the transfer agreement shall be transferred as an entirety to the Pfandbrief bank taking delivery. <sup>2</sup>The entry eliminates the defects of the notary's certification of the transfer agreement. <sup>3</sup>§ 33 par. 5 shall apply *mutatis mutandis*. <sup>4</sup>The transferring Pfandbrief bank and the Pfandbrief bank taking delivery shall be jointly and severally liable for the transferred Pfandbrief liabilities.

(2) <sup>1</sup>In the event that a consideration is granted, § 30 par. 4 shall apply *mutatis mutandis*. <sup>2</sup>§ 30 par. 3 shall apply *mutatis mutandis* subject to the proviso that the cover pool administrator shall be replaced by the Pfandbrief bank taking delivery.

### § 35 Management in a 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 Pfandbrief bank that the assets recorded in the insolvent Pfandbrief bank's cover registers, including the assets within the meaning of § 30 par. 3, may in their entirety or in part be managed in a fiduciary capacity by the insolvent Pfandbrief bank's cover pool administrator for the other Pfandbrief bank insofar as the other Pfandbrief bank assumes the liability for the covered liabilities of the insolvent Pfandbrief 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 managed in a fiduciary capacity in accordance with par. 1 shall be regarded as assets of the other Pfandbrief bank in the relations between the other Pfandbrief bank and the insolvent Pfandbrief 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 corresponding register of the other Pfandbrief bank. <sup>2</sup>The assets specified in the agreement in accordance with par. 1 and recorded in the insolvent Pfandbrief bank's cover register shall be regarded as having been recorded in the other Pfandbrief bank's register. <sup>3</sup>Insofar, the cover pool monitor of the other Pfandbrief bank shall exercise his duties and powers in relation to the insolvent Pfandbrief bank. <sup>4</sup>Note of the management partly in a fiduciary capacity shall be taken in the respective cover register of the insolvent Pfandbrief bank under the individual cover assets.

(4) § 30 par. 3 shall apply *mutatis mutandis*.

### § 36 Partial transfer of the cover pool

<sup>1</sup>In the event of partial transfer of the cover pool in accordance with § 32 par. 1, the proportion of the relevant cover pool which remains at the insolvent Pfandbrief bank must comply with the provisions concerning the cover for Pfandbriefe. <sup>2</sup>Sentence 1 shall apply *mutatis mutandis* in the event of management partially in a fiduciary capacity of the cover pool in accordance with § 35 par. 1.

### § 36a Separation principle in the event of the reorganization or restructuring of the Pfandbrief bank

(1) <sup>1</sup>Measures pursuant to the provisions of the Credit Institution Reorganization Act (KreditReorgG) shall not apply to those parts of the Pfandbrief bank which continue to exist pursuant to § 30 par. 1 sent. 3 in the event of insolvency as a Pfandbrief bank with limited business activity. <sup>2</sup>If a reorganization procedure is ordered under § 7 of the Credit Institution Reorganization Act, §§ 30 to 36 shall apply *mutatis mutandis* to the area of Pfandbrief business. <sup>3</sup>The cover pool administrator shall observe the provisions of the reorganization plan in the performance of his duties and the exercising of his rights unless there is a danger that the Pfandbrief creditors will be discriminated against contrary to §§ 30 to 36.

(2) <sup>1</sup>Where an order to transfer pursuant to § 48a of the German Banking Act affects provisions on the partial or complete transfer of the Pfandbrief business, the transfer shall be made notwithstanding § 48g par. 2 no. 1 of the German Banking Act in accordance with §§ 30 to 36. <sup>2</sup>The cover pool administrator is not bound by the provisions of the order to transfer insofar as these provisions discriminate against the Pfandbrief creditors contrary to §§ 30 to 36.

(3) <sup>1</sup>When the reorganization procedure is initiated or the order to transfer is issued, the supervisory authority can officially appoint the cover pool administrator on a temporary basis. <sup>2</sup>The court appointment shall be effected afterwards without delay.

## SECTION 6

### Legal remedies and infringements

#### § 37 Immediate enforceability

Protests and action in rescission against measures of the supervisory authority in accordance with § 2 par. 2 no. 1, § 3 sent. 2 and 3, § 7 par. 3 sent. 2, § 32 par. 1, § 35 par. 1 sent. 1 as well as § 42 par. 1 sent. 3 and par. 2 shall not have a suspensive effect.

#### § 38 Provisions concerning penalties

Persons shall be punished by imprisonment for a term of up to one year or by payment of a fine who

1. contrary to the provisions of § 4 par. 7 sent. 1 issue Pfandbriefe,
2. contrary to the provisions of § 4 par. 7 sent. 2 knowingly dispose of an asset specified therein or
3. contrary to the provisions of § 5 par. 1 sent. 3 fail to enter a substitute cover asset in the cover register or fail to do so in good time.

#### § 39 Provisions concerning fines

(1) A person's conduct shall constitute an irregularity if he willfully or through negligence issues Pfandbriefe contrary to the provisions of § 4 par. 7 sent. 3.

(2) Irregularities may be punishable by a fine of up to one hundred thousand Euros.

#### § 40 Competent administrative authority

The administrative authority within the meaning of § 36 par. 1 no. 1 of the Procedural Irregularities Act shall be the Federal Financial Supervisory Authority.

## SECTION 7

### Final Provisions

#### § 41 Protection of the name "Pfandbrief"

Bonds may only be issued under one of the names stated in § 1 par. 1 sent. 2 nos. 1 to 4 or under another name that contains the word "Pfandbrief"

1. by banks that have been granted a licence to conduct Pfandbrief business,

2. by deposit-taking banks with head office in another Member State of the European Union or another Contracting State to the Agreement on the European Economic Area, also without a licence from the supervisory authority, if
  - a) it is permitted also in the state of origin to engage in the issuance of bonds under one of the names stated above,
  - b) the bonds are bonds within the meaning of Article 22 par. 4 subparagraph 1 of Directive 85/611/EC of the Council of December 20, 1985 on the Coordination of the Laws and Regulatory and Administrative Provisions relating to Undertakings for Collective Investments in Transferable Securities (UCITS) (Official Journal EC no. L 375 p. 3), last amended by Directive 2006/48/EC of the European Parliament and Council of April 21, 2004 (Official Journal EC no. L 145 p. 1) and the bonds are included in a list submitted to the Commission by the credit institution's state of origin in accordance with Article 22 par. 4 subparagraph 3 of the above-mentioned Directive,
  - c) in the case of the mortgages, ship mortgages and registered liens or foreign aircraft mortgages used as cover, a limit of 50 percent of the market value or 60 percent of the mortgage lending value within the meaning of Directive 2006/48/EC is not exceeded, and
  - d) with regard to the name of the bond any foreign-language original name of the Pfandbrief is stated in all prospectuses, reports and advertising material and it is pointed out that the bond is issued on the basis of the respective foreign law.

#### § 42 Licence for existing Pfandbrief banks

(1) <sup>1</sup>Inasmuch as a credit institution issued on the strength of a relevant licence Pfandbriefe of the categories named in § 1 par. 1 sent. 2 nos. 1 to 3 before July 19, 2005, and at the start of July 19, 2005 is still in possession of the licence to issue Pfandbriefe, the licence needed to conduct Pfandbrief business in accordance with § 2 par. 1 sent. 1 shall be deemed to be granted, restricted to the respective Pfandbrief category. <sup>2</sup>The credit institution shall submit an report before the end of October 18, 2005 which in terms of its contents meets the requirements of an application for licence. <sup>3</sup>The supervisory authority may revoke the licence which shall be deemed to have been granted if the report is not submitted on time.

(2) The supervisory authority may also revoke the licence which shall be deemed to have been granted if the conditions for revocation in accordance with § 35 par. 2 of the German Banking Act are met or if the credit institution does not, notwithstanding par. 3, meet the requirements of § 2 par. 1 sent. 2.

(3) <sup>1</sup>§ 2 par. 1 sent. 2 no. 1 shall not apply to the credit institutions named in par. 1 until December 31, 2008. <sup>2</sup>The time limit set in sent. 1 shall not apply to the Ritterschaftliches Kreditinstitut Stade and to the Calenberg-Göttingen-Grubenhagen-Hildesheim'scher ritterschaftlicher Kreditverein.

### § 43 Licence for mortgage banks

<sup>1</sup>For the mortgage banks within the meaning of § 1 of the Mortgage Bank Act that are licenced at the end of July 18, 2005, the licence for the banking business defined in § 1 par. 1 sent. 2 nos. 1 to 5 and 7 to 10 of the German Banking Act shall be deemed to have been granted in accordance with § 32 of the German Banking Act. <sup>2</sup>The time period stipulated in § 35 par. 1 of the German Banking Act shall begin on July 19, 2005.

### § 44 Licence for ship mortgage banks

<sup>1</sup>For the ship mortgage banks within the meaning of § 1 of the Ship Mortgage Bank Act that are licenced at the end of July 18, 2005, the licence for the banking business defined in § 1 par. 1 sent. 2 nos. 1 to 5 and 7 to 10 of the German Banking Act shall be deemed to have been granted in accordance with § 32 of the German Banking Act. <sup>2</sup>The time period stipulated in § 35 par. 1 of the German Banking Act shall begin on July 19, 2005.

### § 45 Duty to insure

<sup>1</sup>The ineligibility of mortgages to which the Pfandbrief banks are entitled at the start of July 19, 2005 as cover shall not be substantiated by the fact that the building erected on the pledged property is not insured in accordance with § 15 par. 1. <sup>2</sup>Loan claims, secured by ship mortgages, to which the Pfandbrief banks are entitled at the start of 19 July 2005 shall not be ineligible as cover for Ship Pfandbriefe issued by them for the reason that the ship or the ship under construction is not insured in the amount of the compulsory insurance in accordance with § 23 par. 1 sent. 1.

### § 46 Mortgage lending limit

**(1)** Mortgages that were entered before 13 October 2004 into a cover register maintained at the Pfandbrief bank for Mortgage Pfandbriefe may, inasmuch as they do not meet the requirements of § 16 par. 1 to 3, in deviation from § 14 par. 1 be used until 30 June 2006 to cover Mortgage Pfandbriefe in the amount of 50 percent of the value set by the Pfandbrief bank on the basis of a valuation carried out before 13 October.

**(2)** In the case of par. 1, § 14 par. 2 and § 30 par. 3 sent. 4 shall apply subject to the condition that the limit specified in par. 1 shall prevail instead of the mortgage lending limit stipulated in § 14 par. 1.

### § 47 Preferential right of the Ship Pfandbrief creditors

<sup>1</sup>Until the end of July 18, 2009, a Pfandbrief bank that has issued Ship Pfandbriefe in accordance with § 1 no. 1 of the Ship Mortgage bank Act before July 19, 2005 shall not be subject to the limit in § 22 Abs. 5 sent. 2. <sup>2</sup>However, the Pfandbrief bank shall ensure that the total volume of the lendings in the case of which it is not ensured that the preferential right of the Ship Pfandbrief creditors in accordance with § 30 par. 1 covers the claims of the Pfandbrief creditors emanating from these lendings does not, until the end of July 18, 2007, exceed 50 percent of the total volume of the claims in the case of which the preferential right is ensured.

### § 48 Ship Pfandbriefe in a foreign currency

The provisions of the Ship Mortgage Bank Act in force before July 19, 2005 shall continue to apply to the Ship Pfandbriefe issued before July 19, 2005 in accordance with § 37 of the Ship Mortgage Bank Act by a ship mortgage bank as defined by § 1 of the Ship Mortgage Bank Act.

### § 49 Continuing eligibility as cover

**(1)** <sup>1</sup>Notwithstanding § 20 par. 1 sent. 1 no. 1 letter a, claims against credit institutions that are run in the legal form of public-sector corporation or agency shall continue to be eligible as cover without restriction if the claims were already in existence on July 18, 2001. <sup>2</sup>Claims against the said credit institutions shall also be eligible as cover if the claims were agreed on after July 18, 2001 and before July 19, 2005 and their life does not go beyond December 31, 2015.

**(2)** <sup>1</sup>Notwithstanding § 20 par. 1 sentence 1 no. 1 letters d, e and h in the version valid as from March 26, 2009, claims against the debtors or guarantors mentioned therein who have been assigned to credit quality step 2 according to Annex VI of Directive 2006/48/EC remain eligible as cover insofar as the claims were recorded in the cover register before March 26, 2009. <sup>2</sup>The total volume of claims against debtors of credit quality step 2 may not exceed a share of 20 percent of the outstanding Pfandbriefe of each Pfandbrief type; the cover assets encompassed by § 20 par. 1 sentence 1 no. 3 in the version valid as from March 26, 2009 shall be applied against the total volume.

### § 50 Continued validity of previously applicable laws

**(1)** In the event of § 2 par. 3, with regard to the transactions concluded by public-sector credit institutions in accordance with the provisions of the Act relating to Pfandbriefe and Similar Instruments issued by Public Credit Institutions and the cover registers maintained solely to cover these transactions, the above Act and the statutory orders issued for the execu-

tion thereof in their respective version as valid before July 19, 2005 shall apply to public-sector credit institutions subject to the condition that claims against domestic public-sector credit institutions shall be eligible as ordinary cover only insofar as an unlimited state support (“Anstaltslast”) exists for the credit institutions or a guarantee obligation (“Gewährträgerhaftung”) or refinancing guarantee exists for the corresponding liabilities of the credit institutions.

(2) In the event of § 2 par. 3, with regard to the transactions concluded by mortgage banks in accordance with the provisions of the Mortgage Bank Act the cover registers maintained solely to cover these transactions, the Mortgage Bank Act and the statutory orders issued for the execution thereof in their respective version as valid before July 19, 2005 shall apply to mortgage banks subject to the condition that claims against domestic public-sector credit institutions shall be eligible as ordinary cover only insofar as an unlimited state support (“Anstaltslast”) exists for the credit institutions or a guarantee obligation (“Gewährträgerhaftung”) or refinancing guarantee exists for the corresponding liabilities of the credit institutions.

(3) In the event of § 2 par. 3, with regard to the transactions concluded by ship mortgage banks in accordance with the provisions of the Ship Mortgage Bank Act the cover registers maintained solely to cover these transactions, the Ship Mortgage Bank Act and the statutory orders issued for the execution thereof in their respective version as valid before July 19, 2005 shall apply to ship mortgage banks subject to the condition that claims against domestic public-sector credit institutions shall be eligible as ordinary cover only insofar as an unlimited state support (“Anstaltslast”) exists for the credit institutions or a guarantee obligation (“Gewährträgerhaftung”) or refinancing guarantee exists for the corresponding liabilities of the credit institutions.

(4) In the event of the transformation of a public-sector credit institution in a way described in § 1 par. 1 of the Law regulating the Transformation of Companies, par. 1 shall apply with regard to the transactions concluded by the credit institution prior to the transformation for the continuing legal entity after the legal form has been changed or for a legal entity to which the credit institution’s assets have been transferred in their entirety or in part within the scope of the transformation, also if the legal entity is a company run in a private-law legal form.

### § 51 Separation of Pfandbriefe outstanding

<sup>1</sup>Notwithstanding § 4 par. 1 to 2, a Pfandbrief bank may continue to cover the Pfandbriefe it issued before this Act entered into force according to the regulations applicable until this Act entered into force if the Pfandbrief bank notified the supervisory authority of this intention by not later than 18 July 2005. <sup>2</sup>The period for notification is a cut-off period. <sup>3</sup>In this case, the previous cover register is to be maintained separately from that in accordance with § 5 par. 1 sent. 1. <sup>4</sup>Claims against domestic public-sector credit institutions shall be eligible as ordinary

cover only insofar as an unlimited state support (“Anstaltslast”) exists for the credit institutions or a guarantee obligation (“Gewährträgerhaftung”) or refinancing guarantee exists for the corresponding liabilities of the credit institutions. <sup>5</sup>The provisions of §§ 8, 9, 10, 27 and 28 shall not apply in respect of the previous cover register.

### § 52 Continuing provisions of the Act concerning the Amendment and Supplement to the Ship Mortgage Bank Act

(1) <sup>1</sup>If a ship mortgage is entered in the Shipping Register for a claim that is payable in a foreign currency, the sum of the claim and of any supplementary considerations or the maximum amount up to which the ship is to be liable may be stated in a foreign currency. <sup>2</sup>The same applies to the entry of a ship mortgage in the Shipbuilding Register.

(2) The provisions in the adjusted version published in the Federal Law Gazette Part III, classification number 7628-2-1, and revoked by Article 4 par. 1 of the Act on the Amendment and Supplement of the Ship Mortgage Bank Act subject to the condition that inasmuch as they are still in force they shall remain applicable to rights that were entered in foreign currency before the said Act entered into force shall remain applicable unchanged in respect of the scope and field of application indicated in the proviso.

### § 53 (repealed)

# Regulation on the safeguarding at all times of the cover for Mortgage Pfandbriefe, Public Pfandbriefe, Ship Pfandbriefe and Aircraft Pfandbriefe according to the net present value and the calculation of same in the case of Pfandbrief Banks\*

(Pfandbrief-Barwertverordnung – PfandBarwertV)

of 14 July 2005

On the basis of § 4 par. 6 of the Pfandbrief Act of May 22, 2005 (BGBl. I p. 1373) in conjunction with § 1 no. 4 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 Article 11 of the Act of May 22, 2005 (BGBl. I S. 1373), The Federal Financial Supervisory Authority issues the following Regulation in agreement with the Federal Ministry of Justice after consultation with the banking industry's umbrella associations:

## § 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.

\* Working translation submitted by the Association of German Pfandbrief Banks (vdp), not officially licenced by the Federal Ministry of Finance.

## § 2 Calculation of net present value

The net present values of the Mortgage Pfandbriefe, Public Pfandbriefe, Ship Pfandbriefe and Aircraft Pfandbriefe (Pfandbriefe) outstanding and of the assets used to cover them shall be calculated and matched against each other separately for each class of Pfandbriefe every bank working day. The match shall be effected by deducting the net present value of a given class of Pfandbriefe outstanding from the net present value of the assets used to cover them. 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) When calculating the net present values only the currency-specific yield curve for swap deals may be used. 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

The Pfandbrief Bank must ensure that the net present value cover pursuant to § 4 par. 2 sentence 1 of the Pfandbrief Act is given also in the event that interest rates and exchange rates change. 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. If the subsequent match of the amount of the value of the 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. 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) 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. 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. § 6 is then to be applied to foreign currency positions.

1. The number of basis points for the static approach is 250.
2. For the dynamic approach, a number and distribution of maturities appropriate to the scope and structure of the Pfandbrief Bank'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. 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. 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. The resulting values are subsequently to be multiplied by the current interest rate of the respective maturity and, thereafter, by a factor of 100. The underlying interest rate curve shall be shifted upwards or downwards with regard to the relevant maturity by the resulting number of basis points, however, no less than 100 basis points. The new interest rates obtained by this method shall be interpolated to construct the new interest rate curves.

(2) Deviating from subsection 1, a risk value may also be applied. This is to be calculated using the institution's own risk model, the suitability of which has been confirmed in writing by the Federal Financial Supervisory Authority (Federal Authority) on the basis of a review in accordance with § 44 par. 1 sentence 2 of the German Banking Act (KWG). § 313 par. 3 sentence 1 of the Solvency Regulation shall be applicable subject to the following conditions:

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 foreign currency changes on the net present values

(1) 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. 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) The markdowns or markups to be made in accordance with par. 1 must be calculated according to a static or a dynamic approach. 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. (repealed),
  - 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. 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. 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.. The resulting value is to be multiplied by the current exchange rate of the respective foreign currency. The result is equivalent to the markdown or markup to be applied to the current exchange rate.

## § 7 Duties of documentation

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

## § 8 Change of method

Once it has been selected, the Pfandbrief Bank may change the calculation procedure only with the Federal Authority's consent. 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. Where institutions use their own risk models, sentence 2 second half-sentence shall apply with the restriction that, irrespective of § 313 of the Solvency Regulation, consent shall be required only with regard to a change of the parameters stated in § 5 par. 2. Consent can be given only if the Pfandbrief Bank explains convincingly that the changed method enhances the quality of the result.

## § 9 Transitional provisions

(1) Pfandbrief Banks which have filed a notice pursuant to § 51 of the Pfandbrief Act have for the Pfandbriefe covered by this notice and for the assets used to cover them to continue applying the respective provisions of the Pfandbrief Net Present Value Regulation of 19 December 2003 (BGBl. I p. 2815) or of the Mortgage Pfandbrief Net Present Value Regulation of 19 December 2003 (BGBl. I p. 2818).

(2) Until November 30, 2005, Pfandbrief Banks which have issued Ship Pfandbriefe or public-sector bonds pursuant to § 1 of the Ship Mortgage Bank Act already before the coming into effect of the Pfandbrief Act may still use a different suitable method for the calculation required pursuant to § 4 para. 2 sentence 1 of the Pfandbrief Act aimed at safeguarding at all times the cover for these Pfandbriefe.

## § 10 Entry into force, abrogation

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

At the same time, the following regulations shall be abrogated:

1. the Pfandbrief Net Present Value Regulation of December 19, 2003 (BGBl. I S. 2815) and
2. the Mortgage Pfandbrief Net Present Value Regulation of December 19, 2003 (BGBl. I p. 2818).

## Regulation on the Determination of the Mortgage Lending Values of Properties in accordance with § 16 pars. 1 and 2 of the Pfandbrief Act\*

(Beleihungswertermittlungsverordnung – BelWertV)

of 12 May 2006

On the basis of § 16 par. 4 sentences 1 to 3 of the Pfandbrief Act of May 22, 2005 (Federal Law Gazette (BGBl.) I p. 1373) in conjunction with § 1 No. 4 of the Regulation on the Assignment of Powers to issue Statutory Regulations to the Federal Financial Supervisory Authority (BaFin) of December 13, 2005 (Federal Law Gazette (BGBl.) 2003 I p. 3), § 1 No. 4, as last amended by Article 7 No. 1 of the Act of June 22, 2005 (Federal Law Gazette (BGBl.) I p. 1698), the Federal Financial Supervisory Authority (BaFin) after hearing the umbrella organizations of the banking industry decrees in consultation with the Federal Ministry of Justice:

\* Working translation submitted by the Association of German Pfandbrief Banks (vdp), not officially licenced by the Federal Ministry of Finance.

## **PART I**

### **General Provisions and Principles of Procedure**

#### **§ 1 Scope of application**

The provisions of this Regulation are to be applied when determining the mortgage lending values in accordance with § 16 pars. 1 and 2 of the German Pfandbrief Act and when collecting the data required for the valuation.

#### **§ 2 Subject of the determination of value**

The subject of the determination of the mortgage lending value is the property, the right equivalent to real property or comparable right under a foreign legal system which is encumbered or is to be encumbered by the real estate lien.

#### **§ 3 Principle of the determination of the mortgage lending value**

(1) The value on which the lending is based (mortgage lending value) is the value of the property which based on experience may throughout the life of the lending be expected to be generated in the event of sale, unattached by temporary, e.g. economically induced, fluctuations in value on the relevant property market and excluding speculative elements.

(2) To determine the mortgage lending value, the future marketability of the property is to be taken as a basis within the scope of a prudent valuation, by taking into account long-term sustainable aspects of the property, the normal and local market conditions, the current use and alternative appropriate uses of the property.

#### **§ 4 Procedure for the determination of the mortgage lending value**

(1) To determine the mortgage lending value of the property, the income value (§§ 8 to 13) and the depreciated replacement cost value (§§ 14 to 18) of the property serving as cover are to be determined separately. The mortgage lending value is to be derived in accordance with pars. 2 to 6, taking these values into consideration. The property to be valued must be inspected as part of the valuation procedure.

(2) In the case of condominium ownership and part ownership, the comparison method in accordance with § 19 must by way of addition be conducted as a control value when determining the mortgage lending value. Where apartments in condominium ownership and individual, self-contained, commercially used units are concerned, a determination of the depreciated replacement cost value may be dispensed with in these cases.

(3) Of decisive importance to the determination of the mortgage lending value is as a rule the income value, which must not be exceeded. When in such cases the depreciated replacement cost value or comparative value of the property serving as collateral is more than 20 % below the income value, a special examination of the sustainability of the income taken as basis and of the capitalization of same is necessary. If this results in a confirmation of the originally determined income value, a readily comprehensible explanation must be given of the outcome of the examination; otherwise, the income value must be reduced accordingly.

(4) In the case of single-family and semi-detached houses as well as apartments in condominium ownership, the mortgage lending value may take its bearings from the depreciated replacement cost value and a determination of the income value may be dispensed with if the property to be valued is without doubt suitable for owner-occupation with regard to layout, the quality of the fixtures and fittings and the location and if it can, given normal market developments, be assumed on the merits of the individual case that there is permanent demand for the property by potential buyers for owner-occupation. In such cases, the mortgage lending value may also take its bearings from a comparative value determined in accordance with § 19; besides the determination of the income value, the determination of the depreciated replacement cost value may also be dispensed with in this connection. In the case of single-family and semi-detached houses, however, the mortgage lending value may only take its bearings from the comparative value if the determination is based on up-to-date comparable prices of at least five properties that sufficiently correspond also with regard to the area of living space to the property to be valued.

(5) Any deferred maintenance or other construction work recognizable at the time of the valuation as well as building defects and building damage are to be taken into consideration on the basis of the expenditure needed to remedy them on the effective date of valuation or based on empirical values as a separate value deduction. The mortgage lending value must be adjusted accordingly.

(6) In the case of properties under construction, the mortgage lending value is the status value. The latter is the total of the land value (§ 15) and the proportional value of the building(s). The proportional value of the building(s) is calculated from the value of the building(s) of the completed property (§ 16) and the achieved construction stage. The construction stage that is applied must be established by a person to be selected by the Pfandbrief bank who possesses the requisite professional knowledge and is not involved in the planning or execution of the construction; § 7 par. 1 sentence 1 applies accordingly. In cases in which the income value of the property when completed according to plan is below its depreciated replacement cost value, the status value must not exceed the proportional income value that is equivalent to the respective construction stage as a percentage.

## **PART 2**

### **Report and Valuer**

#### **§ 5 Report**

- (1) The mortgage lending value must be determined by way of a report.
- (2) The report must be conducted by one or more valuers appointed by the Pfandbrief bank in general or on a case by case basis. In special cases, for example within the scope of a co-operation or of portfolio purchases, reports prepared for other credit institutions or insurance companies may serve as a basis provided that
  1. these reports meet the requirements of this Regulation,
  2. a Pfandbrief bank staff member who is not involved in the loan decision and possesses the requisite professional knowledge conducts a plausibility check also in respect of the stated individual valuation parameters.
  3. the outcome of the plausibility check is documented.

Reports which have been presented or commissioned by the borrower may not serve as a basis.

- (3) The report must comment on the quality of the property and location, on the regional property market, on the legal and actual attributes of the property and on the property's eligibility as collateral for Pfandbrief coverage, on its usability and marketability. The report must also deal with the question whether a sufficiently large circle of potential buyers and users exists for the surveyed property and, consequently, the sustainable profitability of the property is assured on account of its capability to be used for various purposes and its adequate usability by third parties; any loss in value to be expected over the course of time must be shown and must in particular be taken into consideration when measuring the modernization risk (§ 11 par. 7) and the remaining useful economic life (§ 12 par. 2). The most important valuation parameters and assumptions made must be stated and explained in a readily comprehensible manner.

- (4) All circumstances which affect the depreciated replacement cost value or the income value, in particular any restrictions to use, real servitudes, duties to tolerate, preemptive rights, building encumbrances and all other restrictions and encumbrances, must be named, complied with and taken into consideration by lowering the value if necessary.

#### **§ 6 Valuer**

The valuer must, in respect of his vocational training and professional activity, possess special knowledge and experience in the field of property valuation; persons who have been appointed or certified by a government body, a state-approved body or a body accredited according to the standard DIN EN ISO/IEC 17024 as appraiser or valuer for the valuation of properties are assumed to possess such qualifications. When selecting the valuer the Pfandbrief bank must convince itself that, in addition to many years of professional experience in property valuation, the valuer has the knowledge that is needed specifically to prepare a mortgage lending value assessment, in particular of the respective property market and type of property.

#### **§ 7 Independence of the valuer**

- (1) The valuer must not be involved either in the loan acquisition and loan decision-making process or in the brokering, sale or letting of property. He must not be related to or have any other legal or business relationship with the borrower, nor may he have interests of his own in the outcome of the report. Further, the valuer may not establish the mortgage lending value or process the loan.

- (2) Reports conducted by valuers in the Pfandbrief bank's employ may serve as a basis for determining the mortgage lending value only if the valuers in question are, within the scope of the Pfandbrief bank's structural organization, accountable only to the executive management or are solely part of a unit of valuers which reports directly to the executive management, or are part of a unit comprising all the valuers in question and are not, moreover, up to and including executive management level assigned to a division of the Pfandbrief bank in which property finance transactions are either secured or are subject the singular decision.

## **PART 3**

### **Valuation methods**

#### **SECTION 1**

##### **Income approach**

#### **§ 8 Basis of the income approach**

- (1) For the purpose of the income approach the income value of the building(s) must be determined in accordance with §§ 9 to 12, separately from the land value.

- (2) The land value is to be determined in accordance with § 15.

- (3) The land value and income value of the building(s) together make up, subject to § 13, the income value of the property serving as collateral.

#### **§ 9 Determination of the income value of the building(s)**

- (1) When determining the income value of the building(s), the net annual income that may be achieved on a sustained basis is to be proceeded from. The net income is calculated by deducting the operating expenses (§ 11) from the gross income (§ 10).

- (2) The net income must be reduced by the amount that results from the appropriate interest rate in respect of the land value. The relevant capitalization rate for capitalization in accordance with § 12 is to serve as the basis for the interest rate. Where the property is substantially larger than the equivalent of a use commensurate with the building(s) and where an ad-

ditional use or exploitation of a partial area is permissible and possible, the land value of this partial area is not to be included in the calculation of the interest rate amount. The additional use and exploitation of this partial area is to be described, also in respect of relevant building laws, in a readily comprehensible manner.

(3) The net income reduced in accordance with par. 2 is to be capitalized in accordance with § 12.

### § 10 Gross income

(1) When determining the gross income only the income may be taken into consideration that the property is capable of yielding to any owner on a sustained basis assuming proper management and permissible use. Where the sustainable rent is in excess of the contractually agreed rent, the contractually agreed rent is as a rule to be stated. The rentable floor area is equivalent to the net lettable floor area when the property is used for residential purposes and the permanently lettable usable floor area when the property is used for commercial purposes. Where the property is used for various purposes the proportional income types must be stated separately. Allocable shares in costs to be paid by the tenant or leaseholder to cover running costs are not to be taken into consideration.

(2) In the case of hotel, clinic, nursing home or similar use, the resulting gross incomes pursuant to par. 1 are to be derived on the basis of prudently assumed turnovers achievable as an average per room or bed.

(3) Where there are structural or prolonged vacancies, an examination must be made in particular to establish whether on the basis of the current market situation a letting may in the foreseeable future be expected at all or at the stated rents.

### § 11 Operating expenses

(1) The gross income calculated in accordance with § 10 must be reduced by the operating expenses normally to be covered by the landlord. To this end, income-reducing individual cost items, arrived at from many years of market experience, in respect of management costs, maintenance costs and loss of rental income risk and any other running costs not covered by allocable shares in costs are to be stated and a modernization risk, specific to the property type in question, pursuant to par. 7 to be taken into consideration.

(2) The individual cost items must be within the bands permissible in accordance with Annex 1 unless the special circumstances of the case in question necessitate that a higher amount is stated. A recognizable, acute loss of rental income risk that is in excess of the stated empirical value must be stated as a separate value deduction in the amount of the expected loss. The minimum amount for the deduction of operating expenses must total at least 15 percent of the gross income. As a result, however, the actual or calculated operating expenses of a property must not be undercut.

(3) Management costs within the meaning of par. 1 sentence 2 are

1. the costs of staff and equipment needed to manage the property as well as of the supervision,
2. the costs for book-keeping, accountancy, payment transactions and year-end accounts as well as
3. the costs for concluding and amending lease agreements and the processing of cases of damage or loss insured against.

(4) Maintenance costs within the meaning of par. 1 sentence 2 are costs that have to be incurred as a result of wear and tear, age and weather to preserve the use of the building(s) for the purpose specified during their useful life. They comprise ongoing maintenance and regular repairs of the building(s), but not the modernization of same.

(5) Loss of rental income risk within the meaning of par. 1 sentence 2 is the risk of a reduction in income due to irrecoverable rent arrears or the vacancy of space intended for letting. It also serves to cover the costs of prosecution for payment or the termination of a lease agreement or an eviction.

(6) Running costs within the meaning of par. 1 sentence 2 are the costs that are incurred on an ongoing basis as a result of ownership of the property or of the designated use of the property as well as of the building(s) and other installations for the purpose specified.

(7) The costs for necessary adjustments needed in addition to the maintenance costs to preserve the marketability and safeguard the basic rent level on a permanent basis constitute the modernization risk in accordance with par. 1 sentence 2. They are to be shown as a percentage of the reconstruction costs.

### § 12 Capitalization of net income

(1) The net income less the interest rate amount in respect of the land value in accordance with § 9 par. 2 is to be capitalized, depending on the remaining useful life of the building(s) and on the capitalization rate, in accordance with Annex 4 using the resultant multiplier that corresponds mathematically to the annuity present value factor.

(2) When measuring the remaining useful life, in contrast with the physical useful life only the period is to serve as a basis in which the building(s) can still be operated economically assuming proper maintenance and operation. The remaining useful economic life is to be estimated for the specific property in question on the basis of the question as to how long the lettable of the property appears to be assured with the assumed income, taking into consideration the user requirements that will change at increasingly shorter intervals. The empirical values specified in Annex 2 for the useful life of building(s) are to be taken into consideration.

(3) The capitalization rate corresponds to the assumed interest rate at which the sustained net income, achievable in future, of a property is discounted over the period of its assumed payment on the basis of a prudent assessment and based on experience. It must be derived

from the relevant regional long-term market developments. The higher the income and selling risk of the property is to be categorized, the higher the selected capitalization rate must be. Different types of use must be considered separately in each case.

**(4)** Where the property is used for residential purposes the capitalization rate must not be less than 5 percent, and in the case of commercial use, notwithstanding sentence 3, not less than 6 percent (minimum rates). The bands specified in Annex 3 for individual types of use are to be taken as a basis. The lower limit of each band may be undercut by a maximum of 0.5 percentage points in the case of commercially used properties if the properties concerned are prime properties. This is the case if at least the following criteria are met:

1. a very good location in the urban agglomeration,
2. a preferred site in keeping with the respective type of property,
3. a good infrastructure,
4. good design,
5. high-quality fixtures and fittings,
6. a high-quality type of construction,
7. an especially high marketability,
8. restriction to the uses retail, wholesale, office and business,
9. a very good state of the property and
10. the given possibility to put the property to other uses.

In case of undercutting as specified under sentence 3, the report must provide a special, readily comprehensible explanation.

### **§ 13 Determination of the income value in special cases**

**(1)** If, when the net income is reduced by the interest rate amount in respect of the land value in accordance with § 9 par. 2, no part is left for the determination of the income value of the building(s), only the land value is in deviation to § 8 par. 3 to be stated as the income value of the property serving as collateral. In this case, the land value is to be reduced by the usual costs that would be incurred to bring the site into line with comparable unbuilt sites. Usual costs within the meaning of sentence 2 are in particular the costs for the demolition of the building(s).

**(2)** Where the remaining useful life of the building(s) is less than 30 years, the part of the income value accounted for by the land value is also to be capitalized in respect of the remaining useful life of the building(s), or the costs for the demolition of the building(s) must be determined, shown and deducted from the income value.

**(3)** In cases in which the land value is more than half of the income value, the report must provide an explanation of the assumptions serving as a basis for the calculation of the land value and specifically describe the preconditions for a replacement building and, if applicable, the requisite expenses.

## **SECTION 2 Cost approach**

### **§ 14 Basis of the cost approach**

The depreciated replacement cost value of the property serving as collateral is made up of the land value and the value of the building(s) to be calculated in accordance with § 16. The outdoor installations also belong to the building(s).

### **§ 15 Land value**

- (1)** To calculate the land value, enquiries must be made regarding
1. the location, size and layout of the site,
  2. the type and extent of the possible uses stipulated by building laws and the actual use,
  3. the type and nature of ingresses,
  4. the most important commercial and transport connections,
  5. possibilities of connections to services, sewers and drains,
  6. the recoupment charge for local public infrastructure still to be incurred and
  7. existing reference values and comparable prices.

**(2)** The land value must be stated in square meters of the site area. When calculating the land value, no higher-grade use may be stated than that permissible.

### **§ 16 Value of the building(s)**

**(1)** To determine the value of the building(s), the construction costs per unit of space or area are to be multiplied by the number of the respective reference units of the property to be valued (construction value). The stated construction costs must be appropriate to the respective region and the specific property. The following are, in particular, to be taken into consideration when determining the value:

1. the intended and possible use
2. the total floor area and the share out of rooms
3. the type of construction and the materials used for the shell construction
4. the fixtures and fittings and the value-affecting auxiliary installations
5. the age and the state of preservation in accordance with § 17
6. other value-affecting circumstances as provided for in § 18.

The costs for outdoor installations may not as a rule be stated at more than 5 percent of the construction value.

**(2)** In order to take into consideration any reductions in construction prices and, with that, the lasting validity of the amounts stated, the construction value determined in accordance with par. 1 is to be reduced by a safety margin of at least 10 percent. All valuations must indicate the initial value per unit of space or area, the safety margin deducted as well as the reduction in value due to age, where applicable.

(3) Incidental building costs, in particular costs for planning, execution of construction, examinations and permits by authorities, may only be considered in the usual amount and insofar as they are equivalent to a permanent increase in value. Incidental building costs may be stated up to a maximum of 20 percent of the construction value reduced in accordance with par. 2.

### § 17 Depreciation in Value

(1) The reduction in value due to age is determined according to the ratio of the remaining useful life to the useful life of the building(s); it is to be expressed as a percentage of the construction value. In determining the reduction in value one may, depending on the type and use of the building(s), proceed from an even reduction in value or a reduction in value that changes with increasing age.

(2) Where the usual useful life of the building(s) assuming proper use has been prolonged by maintenance or modernization work, or where failure to carry out maintenance or other circumstances have resulted in a shortening of the remaining useful life, the determination of the reduction in value due to age should be based on the changed remaining life and the usual useful life for the building(s).

### § 18 Taking other value-affecting circumstances into consideration

Other value-affecting circumstances not yet covered by §§ 16 and 17, in particular obsolescence, an above-average or below-average state of repair and a substantial deviation of the actual from the envisaged use, are to be taken into consideration by making value additions or deductions or in another suitable way.

## SECTION 3

### Comparison approach

### § 19 Determination of the comparative value

(1) To determine the comparative value, comparable prices of properties that may be achieved on a sustained basis are to be referred to which sufficiently correspond to the property to be valued in terms of the features that have a major effect on its value, in particular location, fixtures and fittings and possible types of use; the comparable prices may be inferred from collections of purchase prices or of other market data. A safety margin of at least 10 percent must be deducted from the initial value determined in this way.

(2) In the case of condominium ownership or part ownership, the initial value of the property to be valued is arrived at by multiplying the comparable price per square meter of living or useful area by the aggregate area of the condominium ownership or part ownership to be valued, and in the case of parking spaces by multiplying the comparable price for one parking space by the number of parking spaces to be valued; par. 1 sentence 2 applies accordingly.

## SECTION 4

### Special features of individual properties

### § 20 Building land

When valuing building land, both its development status and the future demand for building sites are to be examined. The report must comment on the building license, stage of development and any polluted areas. The right to build may be considered only if it is secured. The value stated is to be derived from suitable comparative values while giving consideration to the current features of the site. § 15 par. 2 is to be applied accordingly.

### § 21 Hereditary building rights and other rights equivalent to real property

When lending against hereditary building rights, the remaining life of the hereditary building right is to be taken into consideration. Restrictions resulting from the hereditary building right must be sufficiently taken into consideration by appropriate value deductions. The report must explain whether and how long the hereditary building right appears to be suitably exploitable in terms of its life and, upon its expiry, the agreed compensation arrangements for the building. This provision applies accordingly to other rights equivalent to real property and such rights under a foreign legal system that are comparable to German-law rights equivalent to real property.

### § 22 Land used for agricultural purposes

(1) Land used for agricultural purposes is land in the case of which the greater part of the gross income is generated through agricultural or forestry use.

(2) In the case of unbuilt land (arable land, grazing land, orchards and vineyards, woodland) the value of the properties is to be derived from appropriate comparable prices taking into consideration the current features of the land; § 15 is to be applied accordingly. In this respect, the type, structure and size of the property are to be given special consideration in the report in terms of regional circumstances, giving consideration in particular to the quality of the soil and the climatic conditions, when deriving the value of the land.

(3) Inasmuch as built-up properties are to be included in the valuation, the income value and the depreciated replacement cost value of each is to be determined. The buildings may be allocated a value in their own right that may be taken into consideration in the determination of the mortgage lending value if the buildings can be used independently and also outside the agricultural operation in each case. § 4 par. 4 is to apply accordingly.

### § 23 Machinery and operating facilities

Machinery and operating facilities are in principle not to be considered when determining the depreciated replacement cost value unless they are essential elements of the subject of the determination of the mortgage lending value within the meaning of § 2. The value of such essential elements is, if they are covered by the real estate lien, to be estimated separately tak-

ing into consideration a normal depreciation and sufficient deductions for wear and tear and technical depreciation. If in the case of machinery which may be expected to become obsolete quickly due to technical developments, its value is not to be stated.

#### **§ 24 Residential properties in the case of the extension of small loans**

**(1)** When a residential property located in Germany is to serve as collateral, a report in accordance with § 5 may be dispensed with if the loan amount to be secured by the property including all previous encumbrances does not exceed EUR 400,000. Where the property is partially used for commercial purposes, however, the part of the income this accounts for may not exceed one third of the gross income. Instead of the report, a simplified valuation is to be conducted or commissioned which must meet the other requirements of this Regulation.

**(2)** The person who in the case of par. 1 conducts the valuation must be sufficiently trained and qualified to determine the mortgage lending value. Such person must not be identical with the person who makes the final loan decision or establishes the mortgage lending value; § 7 par. 1 sentence 2 applies accordingly. The Pfandbrief bank must ensure the good order of the valuations by having a sufficiently large number of representative samples examined by valuers at regular intervals; §§ 6 and 7 are to be applied accordingly.

**(3)** In deviation from § 4 par. 1 sentence 3, an inspection of the property to be valued may be dispensed with in cases covered by par. 1 if

1. the property is already known to the Pfandbrief bank or to the credit institution or insurance company cooperating with the Pfandbrief bank, whereby the property can only be assumed to be known if it has been inspected within in the last two years by a staff member of the Pfandbrief bank or of the cooperating credit institution or insurance company or by order of the Pfandbrief bank or of the cooperating credit institution or insurance company,
2. an apartment in condominium ownership is to serve as collateral which is situated in a building in which the Pfandbrief bank has already inspected at least one apartment of the same kind within the last two years,
3. a single-family house is to serve as collateral which is situated in an estate of the same type of single-family houses in which the Pfandbrief bank has inspected at least one property of the same kind with in this estate in the last two years, or
4. a newly constructed prefabricated house is to serve as collateral the site of which is known to the Pfandbrief bank or to the cooperating credit institution or insurance company and the prefabricated house can on the basis of the manufacturer's catalogue be unequivocally determined in terms of the type and model.

The reasons for not conducting the inspection must be documented in a readily comprehensible manner.

**(3a)** Notwithstanding § 4 par. 1 sentence 3, in the cases of par. 1 an internal inspection of the property to be valued may be dispensed with if the person who conducts the valuation has an adequate knowledge about the most important valuation parameters and

1. if the property was completed in the last ten years whereas the reasons for the dispensation from the internal inspection must be documented in a comprehensible manner, or

2. if a reduction of 10 percent from the result of the determination of the mortgage lending value is taken into account.

**(4)** In the case of the acquisition of a large number of loan claims within the meaning of par. 1 from other credit institutions or insurance companies, valuations conducted by or forsame may serve as a basis if

1. these valuations meet the requirements of par. 1 sentence 3 and of par. 2 sentences 1 and 2,
2. a specialized staff member of the Pfandbrief bank who is not involved in the loan decision conducts a plausibility check, also in respect of the individual valuation parameters stated, and
3. the outcome of the plausibility check is documented.

The plausibility check required in accordance with sentence 1 no. 2 may be restricted to a representative number of valuations that correspond to the acquired portfolio in terms of the region and the property. If it is shown as a result that the values of the properties serving as collateral were not only in individual cases stated too high or if other doubts arise with regard to the appropriateness of the determined values, the control sample must, depending on the outcome of the plausibility check, be suitably widened or an individual check conducted of all valuations for certain regions or property types or a complete revaluation of certain or of all properties serving as collateral in accordance with par. 1 sentence 3 in conjunction with par. 2 sentences 1 and 2. The valuations in accordance with sentence 1 are to be included in the review to be conducted in accordance with par. 2 sentence 3.

## **SECTION 5**

### **Properties located abroad**

#### **§ 25 Cross-border lendings**

**(1)** The determination of the mortgage lending value of properties located outside the Federal Republic of Germany is to be conducted in accordance with §§ 1 to 23 and 26 unless otherwise stipulated in pars. 2 to 5.

**(2)** When determining the mortgage lending value, essential information, data and estimates from a country-specific report prepared in respect of the property to be valued may be referred to insofar as this report is based on transparent valuation methods acknowledged by professional circles, and contains the essential information needed to determine the mortgage lending value. At the time of the determination of the mortgage lending value the country-specific report must be no older than two years and must have been prepared in accordance with the provisions of § 4 par. 1 sentence 3, § 5 par. 2 sentences 1 and 3 and par. 3 as well as of §§ 6 and 7. The data and parameters taken from the country-specific report must be made identifiable in the report to be prepared in accordance with § 5 par. 1 for the purpose of the mortgage lending value. A renewed inspection of the property within the scope of the determination of the mortgage lending value may be dispensed with if the country-specific report adequately describes the findings obtained during the inspection at that time and contains all the requisite information on location, fixtures and fittings and state of the property.

(3) In deriving the capitalization rate to be stated in accordance with § 12 par. 3, the peak values achieved in the respective market not only on a short-term basis must be suitably weighted.

(4) Insofar as the taking into consideration of the remaining useful economic life within the meaning of § 12 par. 2 is not customary or is not shown in country-specific reports, a remaining useful life of 100 years may be taken as a basis to determine the multiplier in accordance with § 12 par. 1, provided the lower actual remaining useful life is compensated for by additional building depreciations within the scope of the deductions for operating expenses.

(5) Where the respective country-specific valuation method does not usually provide for a deduction of operating expenses or does so in only a substantially reduced form, the minimum deduction stipulated in § 11 par. 2 sentence 3 may also be made in the form of an equivalent that produces the same result by stating an increased capitalization rate.

## SECTION 6

### Review of the determination of the mortgage lending value

#### § 26 Review of the basis of the determination of the mortgage lending value

(1) Where indications exist to the effect that the basis of the determination of the mortgage lending value has declined not only insignificantly, it must be reviewed. In particular, this applies when the general price level in the respective regional property market has fallen to an extent that jeopardizes the safety of the lending. Unless owner-occupied residential properties are concerned, a review must also be conducted if the claim secured by the property serving as collateral shows substantial payment arrears of at least 90 days. The mortgage lending value is to be reduced if necessary.

(2) Insofar as a further-reaching duty to review the mortgage lending value exists under other provisions, it will remain unaffected.

## PART 4

### Concluding provisions

#### § 27 Source of reference of the German industrial standard

The German industrial standard referred to in § 6 sentence 1 has been published by Beuth Verlag GmbH, Berlin, and securely stored in an archive at the German Patent and Trade Mark Office in Munich.

#### § 28 Entry into force

This Regulation shall enter into force on August 1, 2006.

Bonn, May 12, 2006

President of the Federal Financial Supervisory Authority  
Sanio

## Annex 1 (to § 11 par. 2)

### Band of the individual cost items for the determination of the mortgage lending value

#### Management costs

- a) Residential building  
Bands of the costs, calculated on the basis of the units:
  - apartments: EUR 200.00 to 275.00
  - garages: EUR 25.00 to 50.00
- b) Commercial properties  
Band: 1 % to 3 % of the annual gross income

It must be ensured in each individual case that the absolute amount shown is beyond doubt suitable for proper management.

#### Maintenance costs

Basis of calculation: construction costs per square meter of living space or floor area (excluding incidental building costs and outdoor installations). The lower limit of the band is as a rule appropriate for new properties, the upper limit for older properties. The state of the property, the standard of fixtures and fittings and the age are to be taken into consideration when calculating the maintenance costs.

- a) e.g. warehouses and production plants with construction costs of EUR 250.00 to 500.00/m<sup>2</sup>: 0.8 % to 1.2 %, absolute lower limit: EUR 2.50/m<sup>2</sup>
- b) e.g. commercial properties of simple standard and consumer markets with construction costs of more than EUR 500.00/m<sup>2</sup>: 0.8 % to 1.2 %, absolute lower limit: EUR 5.00/m<sup>2</sup>
- c) e.g. residential buildings and commercial buildings of medium standard and construction costs of more than EUR 1,000/m<sup>2</sup>: 0.5 % to 1 %, absolute lower limit: EUR 7.50/m<sup>2</sup>
- d) e.g. high-grade office and retail and other commercial properties with construction costs of more than EUR 2,000.00/m<sup>2</sup>: 0.4 % to 1 %, absolute lower limit: EUR 9.00/m<sup>2</sup>
- e) Garages and underground parking spaces: EUR 30.00 to 80.00 per parking space

#### Loss of rental income risk

- a) residential buildings: 2 % or more
- b) commercial properties: 4 % or more

#### Modernization risk

The basis of calculation are the construction costs (without incidental building costs and outdoor installations)

- a) no modernization risk  
(e.g. normal apartment buildings, smaller apartment and commercial buildings, small and medium-sized office buildings, warehouses and production halls): 0 % to 0.3 %
- b) low modernization risk  
(e.g. larger office buildings, apartment, office and commercial buildings with special features regarding fixtures and fittings, retail with simple standard): 0.2 % to 1.2 %

- c) higher modernization risk  
(e.g. downtown hotels, retail with higher standard, leisure properties with simple standard): 0.5 % to 2 %
- d) very high modernization risk  
(e.g. sanatoriums, clinics, leisure properties with higher standard, hotels and retail properties with especially high standard): 0.75 % to 3 %

**Annex 2** (to § 12 par. 2)

**Empirical values for the useful life of building(s)**

- A) Residential use (properties situated in Germany)
  - Apartment buildings: 25 to 80 years
- B) Commercial use (properties situated in Germany)
  - a) commercial and office buildings: 30 to 60 years
  - b) department stores, shopping malls: 15 to 50 years
  - c) hotels and restaurants: 15 to 40 years
  - d) land used for agricultural purposes: 15 to 40 years
  - e) clinics, rehabilitation facilities, retirement and nursing homes: 15 to 40 years
  - f) warehouses, production buildings: 15 to 40 years
  - g) leisure properties (e.g. sports facilities): 15 to 30 years
  - h) multi-storey car parks: 15 to 40 years
  - i) self-service and specialty stores, consumer markets: 15 to 30 years
  - j) petrol stations: 15 to 30 years

**Annex 3** (to § 12 par. 4)

**Bands for capitalization rates**

- A) Residential use (properties situated in Germany) Apartment buildings: 5.0 % to 8.0 %
- B) Commercial use (properties situated in Germany)
  - a) commercial buildings: 6.0 % to 7.5 %
  - b) office buildings: 6.0 % to 7.5 %
  - c) department stores: 6.5 % to 8.0 %
  - d) self-service and specialty stores: 6.5 % to 8.5 %
  - e) hotels and restaurants: 6.5 % to 8.5 %
  - f) clinics, rehabilitation facilities: 6.5 % to 8.5 %
  - g) retirement and nursing homes: 6.5 % to 8.5 %
  - h) land used for agricultural purposes: 6.5 % to 8.5 %
  - i) consumer markets, shopping malls: 6.5 % to 9.0 %
  - j) leisure properties (e.g. sports facilities): 6.5 % to 9.0 %
  - k) multi-storey car parks, petrol stations: 6.5 % to 9.0 %
  - l) warehouses: 6.5 % to 9.0 %
  - m) production buildings: 7.0 % to 9.0 %

**Annex 4** (to § 12 par. 1)

**Multiplier table**

With a remaining useful life of ... years	With a capitalization rate of ... percent										
	5	5.5	6	6.5	7	7.5	8	8.5	9	9.5	10
1	0.95	0.95	0.94	0.94	0.93	0.93	0.93	0.92	0.92	0.91	0.91
2	1.86	1.85	1.83	1.82	1.81	1.80	1.78	1.77	1.76	1.75	1.74
3	2.72	2.70	2.67	2.65	2.62	2.60	2.58	2.55	2.53	2.51	2.49
4	3.55	3.51	3.47	3.43	3.39	3.35	3.31	3.28	3.24	3.20	3.17
5	4.33	4.27	4.21	4.16	4.10	4.05	3.99	3.94	3.89	3.84	3.79
6	5.08	5.00	4.92	4.84	4.77	4.69	4.62	4.55	4.49	4.42	4.36
7	5.79	5.68	5.58	5.48	5.39	5.30	5.21	5.12	5.03	4.95	4.87
8	6.46	6.33	6.21	6.09	5.97	5.86	5.75	5.64	5.53	5.43	5.33
9	7.11	6.95	6.80	6.66	6.52	6.38	6.25	6.12	6.00	5.88	5.76
10	7.72	7.54	7.36	7.19	7.02	6.86	6.71	6.56	6.42	6.28	6.14
11	8.31	8.09	7.89	7.69	7.50	7.32	7.14	6.97	6.81	6.65	6.50
12	8.86	8.62	8.38	8.16	7.94	7.74	7.54	7.34	7.16	6.98	6.81
13	9.39	9.12	8.85	8.60	8.36	8.13	7.90	7.69	7.49	7.29	7.10
14	9.90	9.59	9.29	9.01	8.75	8.49	8.24	8.01	7.79	7.57	7.37
15	10.38	10.04	9.71	9.40	9.11	8.83	8.56	8.30	8.06	7.83	7.61
16	10.84	10.46	10.11	9.77	9.45	9.14	8.85	8.58	8.31	8.06	7.82
17	11.27	10.86	10.48	10.11	9.76	9.43	9.12	8.83	8.54	8.28	8.02
18	11.69	11.25	10.83	10.43	10.06	9.71	9.37	9.06	8.76	8.47	8.20
19	12.09	11.61	11.16	10.73	10.34	9.96	9.60	9.27	8.95	8.65	8.36
20	12.46	11.95	11.47	11.02	10.59	10.19	9.82	9.46	9.13	8.81	8.51
21	12.82	12.28	11.76	11.28	10.84	10.41	10.02	9.64	9.29	8.96	8.65
22	13.16	12.58	12.04	11.54	11.06	10.62	10.20	9.81	9.44	9.10	8.77
23	13.49	12.88	12.30	11.77	11.27	10.81	10.37	9.96	9.58	9.22	8.88
24	13.80	13.15	12.55	11.99	11.47	10.98	10.53	10.10	9.71	9.33	8.98
25	14.09	13.41	12.78	12.20	11.65	11.15	10.67	10.23	9.82	9.44	9.08
26	14.38	13.66	13.00	12.39	11.83	11.30	10.81	10.35	9.93	9.53	9.16
27	14.64	13.90	13.21	12.57	11.99	11.44	10.94	10.46	10.03	9.62	9.24
28	14.90	14.12	13.41	12.75	12.14	11.57	11.05	10.57	10.12	9.70	9.31
29	15.14	14.33	13.59	12.91	12.28	11.70	11.16	10.66	10.20	9.77	9.37
30	15.37	14.53	13.76	13.06	12.41	11.81	11.26	10.75	10.27	9.83	9.43
31	15.59	14.72	13.93	13.20	12.53	11.92	11.35	10.83	10.34	9.89	9.48
32	15.80	14.90	14.08	13.33	12.65	12.02	11.43	10.90	10.41	9.95	9.53
33	16.00	15.08	14.23	13.46	12.75	12.11	11.51	10.97	10.46	10.00	9.57
34	16.19	15.24	14.37	13.58	12.85	12.19	11.59	11.03	10.52	10.05	9.61
35	16.37	15.39	14.50	13.69	12.95	12.27	11.65	11.09	10.57	10.09	9.64
36	16.55	15.54	14.62	13.79	13.04	12.35	11.72	11.14	10.61	10.13	9.68
37	16.71	15.67	14.74	13.89	13.12	12.42	11.78	11.19	10.65	10.16	9.71
38	16.87	15.80	14.85	13.98	13.19	12.48	11.83	11.23	10.69	10.19	9.73
39	17.02	15.93	14.95	14.06	13.26	12.54	11.88	11.28	10.73	10.22	9.76
40	17.16	16.05	15.05	14.15	13.33	12.59	11.92	11.31	10.76	10.25	9.78
41	17.29	16.16	15.14	14.22	13.39	12.65	11.97	11.35	10.79	10.27	9.80
42	17.42	16.26	15.22	14.29	13.45	12.69	12.01	11.38	10.81	10.29	9.82
43	17.55	16.36	15.31	14.36	13.51	12.74	12.04	11.41	10.84	10.31	9.83
44	17.66	16.46	15.38	14.42	13.56	12.78	12.08	11.44	10.86	10.33	9.85
45	17.77	16.55	15.46	14.48	13.61	12.82	12.11	11.47	10.88	10.35	9.86
46	17.88	16.63	15.52	14.54	13.65	12.85	12.14	11.49	10.90	10.36	9.88
47	17.98	16.71	15.59	14.59	13.69	12.89	12.16	11.51	10.92	10.38	9.89
48	18.08	16.79	15.65	14.64	13.73	12.92	12.19	11.53	10.93	10.39	9.90
49	18.17	16.86	15.71	14.68	13.77	12.95	12.21	11.55	10.95	10.40	9.91
50	18.26	16.93	15.76	14.72	13.80	12.97	12.23	11.57	10.96	10.41	9.91

With a remaining useful life of ... years	With a capitalization rate of ... percent										
	5	5.5	6	6.5	7	7.5	8	8.5	9	9.5	10
51	18.34	17.00	15.81	14.76	13.83	13.00	12.25	11.58	10.97	10.42	9.92
52	18.42	17.06	15.86	14.80	13.86	13.02	12.27	11.60	10.99	10.43	9.93
53	18.49	17.12	15.91	14.84	13.89	13.04	12.29	11.61	11.00	10.44	9.94
54	18.57	17.17	15.95	14.87	13.92	13.06	12.30	11.62	11.01	10.45	9.94
55	18.63	17.23	15.99	14.90	13.94	13.08	12.32	11.63	11.01	10.45	9.95
56	18.70	17.28	16.03	14.93	13.96	13.10	12.33	11.64	11.02	10.46	9.95
57	18.76	17.32	16.06	14.96	13.98	13.12	12.34	11.65	11.03	10.47	9.96
58	18.82	17.37	16.10	14.99	14.00	13.13	12.36	11.66	11.04	10.47	9.96
59	18.88	17.41	16.13	15.01	14.02	13.15	12.37	11.67	11.04	10.48	9.96
60	18.93	17.45	16.16	15.03	14.04	13.16	12.38	11.68	11.05	10.48	9.97
61	18.98	17.49	16.19	15.05	14.06	13.17	12.39	11.68	11.05	10.48	9.97
62	19.03	17.52	16.22	15.07	14.07	13.18	12.39	11.69	11.06	10.49	9.97
63	19.08	17.56	16.24	15.09	14.08	13.19	12.40	11.70	11.06	10.49	9.98
64	19.12	17.59	16.27	15.11	14.10	13.20	12.41	11.70	11.07	10.49	9.98
65	19.16	17.62	16.29	15.13	14.11	13.21	12.42	11.71	11.07	10.50	9.98
66	19.20	17.65	16.31	15.14	14.12	13.22	12.42	11.71	11.07	10.50	9.98
67	19.24	17.68	16.33	15.16	14.13	13.23	12.43	11.71	11.08	10.50	9.98
68	19.28	17.70	16.35	15.17	14.14	13.24	12.43	11.72	11.08	10.50	9.98
69	19.31	17.73	16.37	15.19	14.15	13.24	12.44	11.72	11.08	10.51	9.99
70	19.34	17.75	16.38	15.20	14.16	13.25	12.44	11.73	11.08	10.51	9.99
71	19.37	17.78	16.40	15.21	14.17	13.25	12.45	11.73	11.09	10.51	9.99
72	19.40	17.80	16.42	15.22	14.18	13.26	12.45	11.73	11.09	10.51	9.99
73	19.43	17.82	16.43	15.23	14.18	13.27	12.45	11.73	11.09	10.51	9.99
74	19.46	17.84	16.44	15.24	14.19	13.27	12.46	11.74	11.09	10.51	9.99
75	19.48	17.85	16.46	15.25	14.20	13.27	12.46	11.74	11.09	10.51	9.99
76	19.51	17.87	16.47	15.26	14.20	13.28	12.46	11.74	11.10	10.52	9.99
77	19.53	17.89	16.48	15.26	14.21	13.28	12.47	11.74	11.10	10.52	9.99
78	19.56	17.90	16.49	15.27	14.21	13.29	12.47	11.74	11.10	10.52	9.99
79	19.58	17.92	16.50	15.28	14.22	13.29	12.47	11.75	11.10	10.52	9.99
80	19.60	17.93	16.51	15.28	14.22	13.29	12.47	11.75	11.10	10.52	10.00
81	19.62	17.94	16.52	15.29	14.23	13.30	12.48	11.75	11.10	10.52	10.00
82	19.63	17.96	16.53	15.30	14.23	13.30	12.48	11.75	11.10	10.52	10.00
83	19.65	17.97	16.53	15.30	14.23	13.30	12.48	11.75	11.10	10.52	10.00
84	19.67	17.98	16.54	15.31	14.24	13.30	12.48	11.75	11.10	10.52	10.00
85	19.68	17.99	16.55	15.31	14.24	13.30	12.48	11.75	11.10	10.52	10.00
86	19.70	18.00	16.56	15.32	14.24	13.31	12.48	11.75	11.10	10.52	10.00
87	19.71	18.01	16.56	15.32	14.25	13.31	12.48	11.75	11.10	10.52	10.00
88	19.73	18.02	16.57	15.32	14.25	13.31	12.49	11.76	11.11	10.52	10.00
89	19.74	18.03	16.57	15.33	14.25	13.31	12.49	11.76	11.11	10.52	10.00
90	19.75	18.03	16.58	15.33	14.25	13.31	12.49	11.76	11.11	10.52	10.00
91	19.76	18.04	16.58	15.33	14.26	13.31	12.49	11.76	11.11	10.52	10.00
92	19.78	18.05	16.59	15.34	14.26	13.32	12.49	11.76	11.11	10.52	10.00
93	19.79	18.06	16.59	15.34	14.26	13.32	12.49	11.76	11.11	10.52	10.00
94	19.80	18.06	16.60	15.34	14.26	13.32	12.49	11.76	11.11	10.52	10.00
95	19.81	18.07	16.60	15.35	14.26	13.32	12.49	11.76	11.11	10.52	10.00
96	19.82	18.08	16.60	15.35	14.26	13.32	12.49	11.76	11.11	10.52	10.00
97	19.82	18.08	16.61	15.35	14.27	13.32	12.49	11.76	11.11	10.52	10.00
98	19.83	18.09	16.61	15.35	14.27	13.32	12.49	11.76	11.11	10.52	10.00
99	19.84	18.09	16.61	15.35	14.27	13.32	12.49	11.76	11.11	10.52	10.00
100	19.85	18.10	16.62	15.36	14.27	13.32	12.49	11.76	11.11	10.53	10.00

## Statutory Order on the Form and Content of the Cover Registers pursuant to the Pfandbrief Act and on the Recording of the Entries\*

(Cover Register Statutory Order)  
(Deckungsregisterverordnung – DeckRegV)

of August 25, 2006

On the basis of § 5 par. 3 Pfandbrief Act (PfandBVG) of May 22, 2005 (Federal Law Gazette I p. 1373) in conjunction with § 1 no. 4 Statutory Order on the Transfer of Authorizations to Issue Statutory Orders to the Federal Financial Supervisory Authority of December 13, 2002 (Federal Law Gazette 2003 I p. 3), § 1 no. 4, last amended by Article 7 no. 1 of the Act of June 22, 2005 (Federal Law Gazette I p.1698), the Federal Financial Supervisory Authority orders in agreement with the Federal Ministry of Justice after hearing the central associations of the banking industry:

### PART 1 Scope of application; general provisions

#### § 1 Scope of application; definitions

- (1) This statutory order regulates the requirements in terms of the form and content of the cover registers pursuant to § 5 par. 1 sentence 1 Pfandbrief Act, the form of the records and confirmations pursuant to § 5 par. 2 Pfandbrief Act, the type and manner of the transmission of the records as well as the safekeeping of the records by the Federal Financial Supervisory Authority (supervisory authority).
- (2) Deletion notes shall also be deemed to be entries within the meaning of this statutory order.

\* Working translation submitted by the Association of German Pfandbrief Banks (vdp), not officially licenced by the Federal Ministry of Finance.

## § 2 Form of the cover registers; entries

(1) Cover registers may, as provided for in Part 3, be kept in paper form or as electronic registers.

(2) Entries may be made only by persons specifically authorized by the Pfandbrief Bank; the authorization and any changes must be documented. The documentation shall be held in safekeeping for each person for at least five years after the authorization is revoked.

## § 3 Protection of the cover registers

Cover registers are to be afforded special protection against unauthorized access and against damage or destruction by external forces such as fire or water

## § 4 Principal and subsidiary register

(1) A separate cover register shall be kept for each Pfandbrief category as defined by § 1 par. 1 sentence 2 nos. 1 to 3 Pfandbrief Act. If the Pfandbrief Bank makes use of the possibility provided for in § 51 Pfandbrief Act, the cover register hitherto kept for the Pfandbrief category in question shall be kept in addition to the cover register to be kept in accordance with sentence 1. Each cover register must bear the name of the Pfandbrief Bank and the heading “Cover register” (“Deckungsregister”) together with the Pfandbrief category.

(2) Besides the respective principal register, a subsidiary register shall be kept in accordance with § 13 for claims under derivative transactions as defined by § 19 par. 1 no. 4 Pfandbrief Act. Further subsidiary registers may be kept for cover assets as defined by § 18 par. 1 second case (foreign security interests), by § 19 par. 1 nos. 1 to 3 and by § 20 par. 2 nos. 1 and 2 Pfandbrief Act. Further subsidiary registers may be kept for cover assets as defined by § 18 par. 1 second case (foreign security interests), by § 19 par. 1 nos. 1 to 3 and by § 20 par. 2 nos. 1 and 2 Pfandbrief Act. The fact that the subsidiary registers belong to the respective cover register is to be indicated by the heading “Subsidiary register to the cover register” (“Unterregister zum Deckungsregister”), stating also the Pfandbrief category. The principal register must state which sub-subsidiary registers are being kept as parts of the cover register.

(3) Where subsidiary registers are created pursuant to § 5 par. 1 sentence 4 Pfandbrief Act, an entry shall be made in the cover register referring to the subsidiary register. Such reference must describe the type of cover assets entered in the subsidiary register. The cover assets entered in the subsidiary register shall be numbered consecutively within the subsidiary register. The entries must contain the information stipulated in §§ 9 to 14 and reproduce in a clear manner the contents of the forms DR 1, DR 2 and DR 3 as provided for in the Annexes 1 to 3.

## § 5 Completeness of the cover register

(1) Entries may not be subsequently changed except in the case of clerical errors, miscalculations or similar obvious misrepresentations.

(2) Entries are to be made in a permanent manner in such a way that any changes that are made subsequently may be recognized as such at any time. It shall be ensured by technical and organizational measures that the original content remains ascertainable.

## PART 2

### Additional requirements concerning registers kept in electronic form

## § 6 General requirements

(1) The content of a cover register that is kept electronically must be permanently capable of reproduction without change in a legible form and must be permanently archived in a way that ensures auditing is permanently possible.

(2) It must be possible to reproduce the content of a cover register that is kept electronically in a legible form on a display screen and in printouts in such a way that the form and content of the entries are represented in their entirety. The content of the electronic cover register must be capable of printout in its entirety at any time.

## § 7 Technical and organizational measures to ensure data protection and data security

(1) The data processing systems employed must comply with the level of technology and the requirements set down in the Annex to § 9 sentence 1 Federal Data Protection Act (Bundesdatenschutzgesetz – BDSG). In particular, they must ensure that

1. their functions can only be used when the user proves his identity towards the system in a secure manner (identification and authentication),
2. the delegated rights of use are administered in the system (administration of authorizations),
3. the delegated rights of use are checked by the system (authorization check),
4. an audit-proof recording of all accesses (input, read, copy, modify, delete, block) takes place (auditing acceptability),
5. systems employed can be recovered without security risks (recovery),
6. any falsifications of the stored data can be immediately detected by technical checking mechanisms (falsification-proof data) and
7. occurring malfunctions are reported immediately (dependability).

(2) The Pfandbrief Bank shall hold in safekeeping at least one complete backup copy of each electronic cover register. The backup copy shall be stored on a different data carrier than the cover register and updated at least at the end of each working day to the status of the cover register at that point in time.

### **PART 3**

#### **Content of the entries**

#### **§ 8 General requirements**

(1) It must be ensured that cover assets are not entered until all requirements concerning the inclusion of the assets in cover have been met. Backdated entries shall be inadmissible.

(2) Each cover asset shall be entered with a consecutive number within the cover register. The number may not be reassigned after the cover asset is deleted.

(3) One column in the principal and subsidiary registers shall in each case be provided for remarks that are necessary for the unequivocal legal allocation of the cover asset in addition to the other details or that may substantially facilitate such allocation.

#### **§ 9 Entry of mortgages and land charges located in Germany**

Entries of mortgages and land charges located in Germany are to be made as follows in keeping with form DR 1 shown in Annex 1:

1. The columns 1 to 4 are to be given the heading “Description of the cover asset” (“Bezeichnung des Deckungswerts”). In column 1, the consecutive number within the cover register is to be stated under letter a, the file reference number allocated by the Pfandbrief Bank under letter b and the date of the entry under letter c.
2. The encumbered property or right equivalent to real property is to be entered in column 2a. Either the description from the inventory of the land register may be entered or reference may be made to the land register folio. In the latter case, the address of the property must also be stated. In column 2b, the mortgage lending value assumed at the time of the inclusion in cover is to be entered.
3. The real estate lien is to be entered in column 3. The consecutive number under which the real estate lien was entered in the land register, the currency and the nominal amount entered in the land register are to be stated.
4. Except in the case of a mortgage (Hypothek), the secured personal claim is also to be

entered in column 4. The debtor, the currency, the nominal amount and, if it deviates from the file reference number in column 1 letter b, the loan number are to be stated.

5. Deletion notes are to be entered in column 5. The column number and, if applicable, the amount of the entry to be deleted as well as the date of the entry are to be stated. Inasmuch as the deletion is noted at a separate place in the register, in addition to the deletion note in column 5 at least also the details concerning the cover asset to be deleted in columns 1 and 2a are to be repeated. The signature of the cover pool monitor pursuant to § 8 par. 4 sentence 2 half-sentence 2 Pfandbrief Act must be unequivocally allocated to the respective deletion note of the Pfandbrief Bank. Where the description of the cover asset to be deleted is unequivocal, the cover pool monitor’s approval may also be given on a separate sheet which is not part of the cover register.
6. Where the cover asset is entered in a Funding Register pursuant to Section 22a or Section 22b German Banking Act (Kreditwesengesetz - KWG), this must be noted in column 6. The enterprise keeping the register as well as the date of the entry in the Funding Register are to be stated.
7. Where registered assets pursuant to § 5 par. 1a sentence 1 Pfandbrief Act are only partially intended as cover for Pfandbriefe, precise details concerning the scope of the part to serve as cover and its rank vis-à-vis the part which is not to serve as cover shall be entered in column 6.
8. Where registered assets pursuant to § 5 par. 1a sentence 4 Pfandbrief Act are to be managed in their entirety or in part by the Pfandbrief bank as a fiduciary, precise details concerning the creditor of the right of transfer shall be entered in column 6; in the case of partial management in a fiduciary capacity, no. 7 shall apply *mutatis mutandis*.

#### **§ 10 Entry of foreign security interests**

(1) Entries of foreign security interests are to be made analogously to the entries of mortgages and land charges located in Germany pursuant to § 9.

(2) Where the descriptions of the properties or rights equivalent to real property or the descriptions of the foreign security interests in the respective public registers deviate from the descriptions in accordance with the German Land Registration Code (Grundbuchordnung – GBO), the descriptions actually used in the public registers are to be used. The columns 2a and 3 of form DR 1 are to be modified accordingly. Where the columns 2a and 3 do not suffice for the entries required thereunder due to the local peculiarities when making entries in public registers, supplementary sheets may be added which shall become part of the cover register. The supplementary sheets are to be marked using the consecutive number from column 1 letter a.

(3) Insofar as properties located abroad are not included in public registers, the address, size and details that are customary under the respective legal system and make an unequivocal identification of the property possible are to be entered.

### § 11 Entry of cover assets pursuant to § 20 par. 1 Pfandbrief Act

Entries of cover assets pursuant to § 20 par. 1 Pfandbrief Act are to be made as follows in keeping with form DR 2 in Annex 2:

1. The columns 1 to 3 are to bear the heading “Description of the cover asset” (“Bezeichnung des Deckungswerts”). In column 1, the consecutive number of the entry in the cover register is to be stated under letter a, the institution’s internal file reference number under letter b and the date of the entry under letter c.
2. In column 2, the debtor is to be entered stating the loan number, and in the case of securities, stating the securities identification number.
3. In column 3, the currency and the nominal amount of the claim are to be stated as well as, in cases in which a full guarantee has been assumed, the body that issued the consent or guarantee.
4. Deletion notes are to be entered in column 4 stating the date. Inasmuch as the deletion is noted at a separate place in the register, in addition to the deletion note in column 4 at least also the details concerning the asset to be deleted in columns 1 and 2 are to be repeated. § 9 no. 5 sentences 4 and 5 shall apply *mutatis mutandis*.

### § 12 Entry of cover assets pursuant to § 21 and § 26 par. 1 no. 1 Pfandbrief Act

(1) Entries of cover assets pursuant to § 21 and § 26 par. 1 no. 1 Pfandbrief Act are to be made, subject to par. 2, in accordance with § 9.

(2) In column 2a, the description of the encumbered real property is replaced by the description in the public register of the ship or ship under construction serving as incumbrance as well as by the name of the register and of the registration office. In the case of rights in rem pursuant to § 22 par. 5 Pfandbrief Act that do not serve to secure a personal claim, and in the case of abstract promises of payment or debt acknowledgements that are secured by ship mortgages, the underlying loan claims are to be entered in column 4. § 9 no. 4 sentence 2 shall apply *mutatis mutandis*.

### § 12a Entry of cover assets pursuant to §§ 26a and 26f par. 1 no. 1 Pfandbrief Act

(1) The entry of cover assets pursuant to §§ 26a and 26f par. 1 no. 1 Pfandbrief Act is to be made, subject to par. 2, in accordance with § 9.

(2) In column 2a, the description of the encumbered real property is replaced by the description in the public register of the aircraft lent on as well as by the name of the register and the registration office. In the case of rights in rem pursuant to § 26b par. 5 Pfandbrief Act that do not serve to secure a personal claim, and in the case of abstract promissory notes or debt acknowledgements that are secured by registered liens pursuant to § 1 Law on Rights in Aircraft (LuftFzG) or by foreign aircraft mortgages, the underlying loan claims are to be entered in column 4. § 9 no. 4 sentence 2 shall apply *mutatis mutandis*.

### § 13 Entry of claims under derivative transactions

The entry of claims under derivative transactions in the respective subsidiary register is to be made as follows in keeping with form DR 3 shown in Annex 3 by entering the derivatives included in cover:

1. The columns 1 to 8 are to be given the heading “Description of the cover asset” (“Bezeichnung des Deckungswerts”). Column 1 contains under letter a the consecutive number within the cover register and under letter b the date of the entry; column 2 contains the registration number of the Pfandbrief Bank.
2. In column 3, the name and address of the counterparty are to be entered.
3. Column 4 contains the description of the product and product-specific details such as the amounts and currencies of the exchange of capital, the amount of the interest rates and any further details necessary for the unequivocal identification of the contract.
4. In column 5, the registration number of the counterparty is to be entered.
5. Column 6 contains under letter a the date of the individual transaction, under letter b the life and under letter c the maturity.
6. In column 7, the assets are to be entered with which the counterparty has provided the Pfandbrief Bank as collateral for claims under the derivative transaction.
7. In column 8, the cover pool monitor can give his approval as is required pursuant to § 5 par. 1 sentence 2 Pfandbrief Act by affixing his signature. Where the description of the derivative is unequivocal, the cover pool monitor’s approval may also be given on a separate sheet which is not part of the cover register.
8. Deletion notes are to be entered in column 9 stating the date. Inasmuch as the deletion is entered at a separate place in the register, in addition to the deletion note in column 9 at least also the details of the asset to be deleted in columns 1 to 3 and 6 are to be repeated in this respect. § 9 no. 5 sentences 4 and 5 shall apply *mutatis mutandis*.

### § 14 Entry of cover assets in accordance with § 4 par. 1 sentence 2, § 19 par. 1 nos. 1 and 2, § 20 par. 2 no. 2 as well as § 26f par. 1 nos. 2 and 3 Pfandbrief Act

Entries of cover assets pursuant to § 4 par. 2 sentence 2, § 19 par. 1 nos. 1 and 2, § 20 par. 2 no. 2 as well as § 26f par. 1 nos. 2 and 3 Pfandbrief Act are in principle to be made in keeping with § 11 unless the unequivocal identification of the cover assets necessitates other or additional details. In the case of cover assets pursuant to § 4 par. 1 sentence 2 no. 1 Pfandbrief Act, the particular form of the obligation is to be indicated by way of addition. In the case of § 4 par. 1 sentence 2 no. 3 Pfandbrief Act, the account-maintaining bank and the account number are to be stated instead of the debtor.

#### **PART 4**

### **Records and confirmations pursuant to § 5 par. 2 Pfandbrief Act**

#### **§ 15 Form of recording and transmission**

- (1) The record pursuant to § 5 par. 2 Pfandbrief Act must reproduce in its entirety all the entries that were made in the cover registers during the last half calendar year. The individual pages of the record must be numbered consecutively and be connected firmly with each other in a suitable manner.
- (2) Where the Pfandbrief Bank keeps an electronic cover register, the record may be made in that the entries of the last half calendar year are printed out together. The printout must be marked as such and the date of the data retrieval must be affixed thereto.
- (3) The entries may also be transmitted using suitable data carriers that are not writable more than once. If in this case the cover registers are transmitted in their entirety, the entries of the last half calendar year are to be specially marked.

#### **§ 16 Confirmation by the cover pool monitor**

- (1) The cover pool monitor has to confirm that the record pursuant to § 5 par. 2 Pfandbrief Act reproduces the entries of the last half calendar year in their entirety and that its content concurs with that of these entries. Also in the event of the transmission of the cover registers in their entirety in accordance with § 15 par. 3 sentence 2, the confirmation shall refer only to these entries.
- (2) The cover pool monitor may also by way of a suitable random sample convince himself of the completeness and the full concurrence in terms of the content. Insofar as he makes use of this possibility, he must indicate this within the scope of his confirmation. The random sample must be documented in a transparent manner and the suitability must be explained.
- (3) Clerical errors, miscalculations and similar obvious misrepresentations may be corrected only by the Pfandbrief Bank.
- (4) The confirmation must be given in writing. §§ 126 and 126a German Civil Code (Bürgerliches Gesetzbuch – BGB) shall apply *mutatis mutandis*. In the case of transmission in accordance with § 15 par. 3, the cover pool monitor must in addition affix his signature to a sticker which must be permanently applied to the data carrier in such a way that it cannot be removed without sustaining recognizable damage.

#### **§ 17 Safekeeping by the Federal Financial Supervisory Authority**

The supervisory authority shall hold the records in safekeeping for 50 years. The records shall be afforded special protection against unauthorized access and against damage or destruction by external forces. Authorizations to access the records shall be restricted to certain staff members of the supervisory authority.

#### **PART 5**

### **Closing provisions**

#### **§ 18 Transitional provisions**

- (1) Cover registers which the institutions kept on the basis of legal provisions prior to the entry into effect of this Statutory Order and which make possible an unequivocal allocation of the entered cover assets under the law of property, may be continued in the present form until December 31, 2006. Thereafter, the requirements set down in this Statutory Order shall apply only to cover assets in respect of which new entries are to be made.
- (2) It is admissible to keep the electronic cover register only for the cover assets to be added as from the date on which it is introduced. The relevant point in time is to be stated in the part of the cover register kept in paper form and in the part of the cover register kept in electronic form. The uniformity of the cover register is to be created by way of clear references to the parts that are continued to be kept in paper form.

#### **§ 19 Entry into force**

This Statutory Order shall enter into force on the day after promulgation.

Bonn, August 25, 2006

President of the Federal Financial Supervisory Authority  
Sanio

**Annex 1 (to § 9) Form DR 1** Cover register (mortgages)

Description of the cover asset								Deletions				
1	2a	2b	3			4			5		6	
a) Consecutive no. b) File ref. no. c) Date	Description of the encumbered property or right equivalent to real property	Mortgage lending value at inclusion in cover	Real security			Secured personal claim(s) (may be dispensed with in case of mortgages) a) Consecutive no. b) File ref. no. c) Date			Column no. of the entry to be deleted	Amount	Date, cover pool monitor's signature	Re-remarks
			Consecutive no. in section III	Currency	Nominal amount							

**Annex 2 (to § 11) Form DR 2** Cover register (public-sector)

Description of the cover asset					Deletions		
1	2	3			4	5	
a) Consecutive no. b) File ref. no. c) Date	Debtor and loan no. or securities identification no.	Currency and nominal amount of the loan		if applicable, consent or guarantee by	a) Deleted on (date) b) Cover pool monitor's signature	Re-remarks	
		Currency	Amount				

**Annex 3 (to § 13) Form DR 3** Subsidiary register to cover register (mortgages)/(public-sector)/(ship mortgages)  
Subsidiary register for derivatives

Description of the cover asset								Deletions		
1	2	3	4	5	6	7	8	9	10	
a) Consecutive no. b) Date	Registration no. of the Pfandbrief Bank	Name and address of the counterparty	Denomination of the product, product-specific details	Registration no. of the counterparty	a) Individual transaction of b) Life c) Maturity	Collateral	Cover pool monitor's signature	Date, cover pool monitor's signature	Re-remarks	
										*Amounts and currencies of the exchange of capital *Interest rates *Further details, if applicable

**Regulation on the Determination of the Mortgage Lending Values of Ships and Ships under Construction in accordance with § 24 pars. 1 to 3 of the Pfandbrief Act\***

(Schiffsbeleihungswertermittlungsverordnung – SchiffsBelWertV)

of May 6, 2008

On the basis of § 24 par. 5 sentences 1 and 2 of the Pfandbrief Act of May 22, 2005 (Federal Law Gazette (BGBl.) I p. 1373) in conjunction with § 1 No. 4 of the Regulation on the Assignment of Powers to Issue Statutory Regulations to the Federal Financial Supervisory Authority of December 13, 2002 (Federal Law Gazette (BGBl.) 2003 I p. 3), § 1 No. 4, as last amended by Article 7 No. 1 of the Act of June 22, 2005 (Federal Law Gazette ((BGBl.) I p. 1698), the Federal Financial Supervisory Authority after hearing the umbrella organizations of the banking industry decrees in consultation with the Federal Ministry of Justice:

**PART 1**  
**General Provisions and Principles of Procedure**

**§ 1 Scope of application**

The provisions of this Regulation are to be applied when determining the ship mortgage lending values in accordance with § 24 pars. 1 to 3 of the Pfandbrief Act and when collecting the data required for the valuation

\* Working translation submitted by the Association of German Pfandbrief Banks (vdp), not officially licenced by the Federal Ministry of Finance.

## § 2 Subject of the determination of value

The subject of the determination of the ship mortgage lending value are ships and ships under construction which are recorded in a public register.

## § 3 Principle of the determination of the ship mortgage lending value

(1) The value on which the lending is based (ship mortgage lending value) is the value of the ship or ship under construction which, based on experience, may be expected to be generated in the event of sale, irrespective of temporary, e.g. economically induced, fluctuations in value on the relevant market and excluding speculative elements.

(2) To determine the ship mortgage lending value, the sustainable aspects of the ship, its age and its usability are to be taken into account.

## § 4 Procedure for the determination of the mortgage lending values for ships and ships under construction

(1) To determine the ship mortgage lending value of a ship the current market value (§ 9), the average market value of the last ten years (§ 10) and the new construction price (§11) or purchase price (§ 12) of the ship to be valued are to be determined.

(2) The ship mortgage lending value must not exceed either the current market value of the ship or the average market value of the last ten years. Where market values are available only for a shorter time period than ten years, the average market value is to be determined for this shorter time period; in such cases, sentence 1 shall be applied subject to the proviso that the current market value is to be reduced by 15 percent; where the average market value can only be determined for three years or less, this markdown must be at least 25 percent.

(3) In the case of new ship constructions the new construction price constitutes a further ceiling for the ship mortgage lending value. In the case of ship purchases, the ship mortgage lending value may not exceed the purchase price.

(4) If a current market value is not available or an average market value of a ship of the same type cannot be determined, another appropriate method is to be applied. In such cases, the ship mortgage lending value may not exceed either the new construction price less at least 25 percent or the purchase price reduced by the same amount.

(5) The ship mortgage lending value of a ship under construction must be determined in accordance with § 13.

## PART 2

## Report and valuer

## § 5 Report

(1) The ship mortgage lending value must be determined by way of a report.

(2) The report must be conducted by one or more valuers appointed by the Pfandbrief bank in general or on a case by case basis. In special cases, for example within the scope of cooperation agreements or of portfolio purchases, reports prepared for other credit institutions may serve as a basis provided that

1. these reports comply with the provisions of this Regulation,
2. Pfandbrief bank's staff member who is not involved in the loan decision and possesses the requisite professional knowledge conducts a plausibility check, also in respect of the stated individual valuation parameters, and
3. the outcome of the plausibility check is documented.

Reports which have been presented or commissioned by the borrower or shipowner may not serve as a basis.

(3) The report must comment on the parameters mentioned in § 4.

(4) The report must describe the type of ship and its practical usefulness, in particular with regard to navigation area, usability and load capacity, taking into consideration the existing equipment, in particular with regard to the loading and unloading facilities. Attention must be drawn to the ship's advantages and shortcomings.

(5) When determining the current market value and the average market value of the last ten years, the report may make reference to the assessment by a recognized broker or appraiser engaged in the valuation of ships. If an inspection has been carried out by a recognized technical surveyor, the report may also make reference to the inspection report.

## § 6 Inspection

(1) The ship to be valued must be inspected as part of the valuation process. To this end, all the ship's papers that are on board are to be inspected. The classifications of hull and machinery are to be determined; the validity period of the classification certificates is to be established. The inspection may also be carried out by a recognized technical surveyor.

- (2) An inspection may be dispensed with if
1. the shipowner submits to the Pfandbrief bank the classification certificates of a recognized classification society and these certificates show that the ship has been inspected by the classification society within the last 15 months,
  2. the ship is not older than three years and the classification certificate is presented at delivery, or
  3. the ship is not older than five years and, in addition to the classification certificate, the interim class certificate is presented at delivery.

The Pfandbrief bank is required to examine the genuineness of the classification certificates.

### § 7 Valuer

(1) The valuer must, in respect of his vocational training and professional activity, possess special knowledge and experience in the field of the valuation of ships. When selecting the valuer the Pfandbrief bank must convince itself that, in addition to many years of professional experience in the valuation of ships, the valuer possesses the knowledge that is needed specifically to prepare a ship mortgage lending value assessment, in particular of the ship market.

(2) If the valuer does not himself carry out the inspection, a technical or engineering vocational training is not necessary.

### § 8 Independence of the valuer

(1) The valuer must not be involved either in the loan acquisition and loan decision-making process or in the brokering, sale, letting or charter of the ship to be valued. He must not be related to or have any other legal or business relationship with the borrower, nor may he have interests of his own in the outcome of the report. Further, the valuer may not establish the mortgage lending value or process the loan. Sentences 1 to 3 shall also apply to recognized assessors, brokers or technical surveyors to whose assessment or inspection report the report makes reference.

(2) Reports conducted by valuers in the Pfandbrief bank's employ may serve as a basis for determining the ship mortgage lending value only if the valuers in question are, within the scope of the Pfandbrief bank's structural organization, accountable only to the executive management or are solely part of a unit of valuers which reports directly to the executive management, or are part of a unit comprising all the valuers in question and are not, moreover, up to and including executive management level assigned to a division of the Pfandbrief bank in which ship finance transactions are either secured or are subject to singular decision.

## PART 3

### Valuation methods

#### § 9 Current market value

(1) The current market value is the estimated amount for which a ship could be sold on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after an appropriate marketing period, wherein the parties had each acted knowledgeably, prudently and without compulsion.

(2) When determining the current market value one must proceed from the premise of a charter-free ship. If a price basis has been derived from sales of ships of the same type, such price basis must be adjusted for the special features of the ship to be valued.

#### § 10 Average market value

The average market value is the average amount of the market values of a ship of the same type for the last calendar years before the year of valuation that are to be taken as a basis.

#### § 11 New construction price

The new construction price is the price for construction contractually agreed with the shipyard, plus incidental costs such as interest during construction, costs of building supervision and of the original equipment, insofar as the incidental costs are appropriate and customary.

#### § 12 Purchase price

The purchase price is the contractually agreed price for the purchase of the ship to be valued. The purchase price is also the price that is agreed for the purchase of a building contract in respect of a ship under construction or a ship to be constructed in the future.

#### § 13 Valuation of ships under construction

In the case of ships under construction, the status value is to be determined as the ship mortgage lending value. The status value corresponds to the construction stage, which must be confirmed in writing by a technical surveyor or the shipyard. The specifications, the construction drawings and the contracts concluded with the shipyard are to be inspected within the scope of the determination of the mortgage lending value.

#### **PART 4**

#### **Review of the ship mortgage lending value and entry into force**

##### **§ 14 Review of the basis of the determination of the ship mortgage lending value**

(1) Where indications exist to the effect that the basis of the determination of the ship mortgage lending value has declined not only insignificantly, it must be reviewed. In particular, this applies when the general price level in the respective ship market has fallen to an extent that jeopardizes the safety of the lending. The ship mortgage lending value is to be reduced if necessary.

(2) Insofar as a further-reaching duty to review the ship mortgage lending value exists under other provisions, it will remain unaffected.

##### **§ 15 Entry into force**

This Regulation shall enter into force on July 1, 2008.

Bonn, May 6, 2008

President of the Federal Financial Supervisory Authority  
Sanio

## **Regulation on the Determination of the Mortgage Lending Values of Aircraft, in accordance with § 26d pars. 1 and 2 of the Pfandbrief Act\***

Flugzeugbeleihungswertermittlungsverordnung – FlugBelWertV)

of April 20, 2009

On the basis of § 26d par. 3 sentences 1 and 2 of the Pfandbrief Act, to which Article 1 no. 24 of the Act of March 20, 2009 (Federal Law Gazette (BGBl.) I p. 607) has been added, the Federal Ministry of Finance decrees in consultation with the Federal Ministry of Finance after hearing the umbrella organizations of the banking industry:

#### **PART 1**

#### **General Provisions and Principles of Procedure**

##### **§ 1 Scope of application**

The provisions of this Regulation shall be applied when determining the aircraft mortgage lending values in accordance with § 26d pars. 1 and 2 of the Pfandbrief Act and when collecting the data required for the valuation.

\* Working translation submitted by the Association of German Pfandbrief Banks (vdp), not officially licenced by the Federal Ministry of Finance.

## § 2 Subject of the determination of value

The subject of the determination of the aircraft mortgage lending value are aircraft within the meaning of § 1 par. 2 sent. 1 no. 1 of the German Air Traffic Act (LuftVG) which are recorded in a public register.

## § 3 Principle of the determination of the aircraft mortgage lending value

(1) The value on which the lending is based (aircraft mortgage lending value) is the value of the aircraft which, based on experience, may be expected to be generated in the event of sale, irrespective of any temporary, e.g. economically induced, fluctuations in value on the relevant market and excluding speculative elements.

(2) In determining the aircraft mortgage lending value, the sustainable aspects of the aircraft, its age and its usability are to be taken into account.

## § 4 Procedure for the determination of mortgage lending values for aircraft

(1) To determine the aircraft mortgage lending value of an aircraft the current market value (§ 9), the average market value of the last ten years (§ 10), and the value assuming balanced market conditions and an average state of repair (§ 11) of the aircraft to be valued are to be referred to.

(2) The aircraft mortgage lending value must not exceed either the current market value of the aircraft, the average market value of the last ten years or the value determined in accordance with § 11 assuming balanced market conditions and an average state of repair. Where market values are available only for a shorter time period than ten years, the average market value is to be determined for this shorter time period; in such cases, sentence 1 shall be applied subject to the proviso that the value determined in accordance with § 11 assuming balanced market conditions and an average state of repair is to be reduced by 10 percent. Where no average market value can be determined for a specific aircraft type, sentence 2 shall apply *mutatis mutandis*.

(3) Where a current market value in accordance with § 9 cannot be determined, another appropriate method is to be applied. In such cases, the aircraft mortgage lending value may not exceed the value reduced by 25 percent assuming balanced market conditions and an average state of repair.

## PART 2

## Report and valuer

### § 5 Report

(1) The aircraft mortgage lending value must be determined by way of a report.

(2) The report must be conducted by one or more valuers appointed by the Pfandbrief bank in general or on a case by case basis. In special cases, for example within the scope of cooperation agreements or of portfolio purchases, reports prepared for other credit institutions may serve as a basis provided that

1. these reports comply with the provisions of this Regulation,
2. the Pfandbrief bank's staff member who is not involved in the loan decision and possesses the requisite professional knowledge conducts a plausibility check, also in respect of the stated individual valuation parameters, and
3. the outcome of the plausibility check is documented.

Reports which have been presented or commissioned by the borrower or aircraft owner may not serve as a basis.

(3) The report must comment on the parameters mentioned in § 4.

(4) The report must describe the type of aircraft and its practical usefulness, in particular with regard to payload/range profile, performance data and fuel consumption, taking into consideration the existing equipment, in particular with regard to flight security and navigation equipment, aircraft engine manufacturer and performance variants (taking account of the maximum permissible take-off mass). Attention must be drawn to the advantages and shortcomings of the aircraft.

(5) When determining the current market value, the average market value of the last ten years and the value assuming balanced market conditions and an average state of repair, the report may make reference to the assessment by a recognized appraiser engaged in the valuation of aircraft. If an inspection has been carried out by a recognized technical surveyor, the report may also make reference to the inspection report.

### § 6 Inspection

(1) The aircraft to be valued must be inspected as part of the valuation process. To this end, all the aircraft papers required to be kept on board in accordance with the provisions of the German Air Navigation Certification Order (LuftZVO) are to be inspected. In this context, the features of the airframe, of the aircraft equipment and of the aircraft engines are to be determined; the maintenance status is to be established. The inspection may also be carried out by a recognized technical surveyor.

(2) An inspection may be dispensed with if the aircraft has been delivered for the first time and has been accepted by the operator, or the aircraft owner affirms to the Pfandbrief bank maintenance within the scope of a maintenance program approved by the manufacturer and the responsible aviation authority in each case and submits up-to-date proof of maintenance for valuation purposes. The proof of maintenance must indicate that the aircraft is subject to a maintenance program approved by the responsible aviation authority and is being maintained by a maintenance services company approved by the responsible aviation authority. The maintenance within the scope of an approved maintenance program shall be deemed to be affirmed within the meaning of sentence 1 if the aircraft is operated by an air carrier with the operating license stipulated in § 20 par. 4 of the German Air Traffic Act (LuftVG).

### § 7 Valuer

(1) The valuer must, in respect of his vocational training and professional activity, possess special knowledge and experience in the field of the valuation of aircraft. When selecting the valuer the Pfandbrief bank must convince itself that, in addition to many years of professional experience in the valuation of aircraft, the valuer possesses the knowledge that is needed specifically to prepare an aircraft mortgage lending value assessment, in particular knowledge of the aircraft market. Proof of the necessary knowledge shall be deemed to have been furnished in cases in which valuers are certified by the International Society of Transport Aircraft Trading (ISTAT).

(2) If the valuer does not himself carry out the inspection, technical or engineering vocational training is not necessary.

### § 8 Independence of the valuer

(1) The valuer must not be involved either in the loan acquisition and loan decision-making process or in the brokering, sale, letting or charter of the aircraft to be valued. He must not be related to or have any other legal or business relationship with the borrower, nor may he have interests of his own in the outcome of the report. Further, the valuer may not establish the mortgage lending value or process the loan. Sentences 1 to 3 shall also apply to recognized assessors, brokers or technical surveyors to whose assessment or inspection report the report makes reference.

(2) Reports conducted by valuers in the Pfandbrief bank's employ may serve as a basis for determining the aircraft mortgage lending value only if the valuers in question are, within the scope of the Pfandbrief bank's structural organization, accountable only to the executive management or are solely part of a unit of valuers which reports directly to the executive management, or are part of a unit comprising all the valuers in question and are not, moreover, up to and including executive management level assigned to a division of the Pfandbrief bank in which aircraft finance transactions are either secured or are subject to singular decision.

## PART 3

### Valuation methods

#### § 9 Current market value

(1) The current market value is the estimated amount for which an aircraft could be sold on the date of valuation under the given market conditions between a willing buyer and a willing seller in an arm's length transaction after an appropriate marketing period, wherein the parties had each acted knowledgeably, prudently and without compulsion.

(2) When determining the current market value one must proceed from the premise of an aircraft that is not subject to a lease agreement. If a basic price has been derived from the sale of aircraft of the same type, such basic price must be adjusted for the special features of the aircraft to be valued.

#### § 10 Average market value

(1) The average market value is the average amount of the market values of an aircraft of the same type for the last calendar years before the year of valuation that are to be taken as a basis.

(2) § 9 par. 2 shall apply *mutatis mutandis*.

#### § 11 Value assuming balanced market conditions and an average state of repair

(1) The value assuming balanced market conditions and an average state of repair shall be the estimated amount for which an aircraft could be sold on the date of valuation assuming an average maintenance status and an average overall state of repair under balanced market conditions between a willing buyer and a willing seller in an arm's length transaction after an appropriate marketing period, wherein the parties had each acted knowledgeably, prudently and without compulsion.

(2) § 9 par. 2 shall apply *mutatis mutandis*.

#### PART 4

### Review of the determination of the aircraft mortgage lending value and entry into force

#### § 12 Review of the basis of the determination of the aircraft mortgage lending value

(1) Where indications exist to the effect that the basis of the determination of the aircraft mortgage lending value has deteriorated not only insignificantly, it must be reviewed. In particular, this shall apply when the general price level in the respective aircraft market has fallen to an extent that jeopardizes the safety of the lending. The aircraft mortgage lending value is to be reduced if necessary.

(2) Insofar as a further-reaching duty to review the aircraft mortgage lending value exists under other provisions, it will remain unaffected.

#### § 13 Entry into force

This Regulation shall enter into force on the day subsequent to its promulgation.

## German Banking Act\* – Excerpt

(Kreditwesengesetz – KWG)

#### PART 1

### General Provisions

1. Credit institutions, financial services institutions, financial holding companies, mixed activity financial holding companies, financial conglomerates, mixed activity business enterprises and financial enterprises

#### § 1 Definitions

(1) Credit institutions are enterprises which conduct banking business commercially or on a scale which requires a commercially organised business undertaking. Banking business comprises

[...]

- 1a. the business specified in § 1 par. 1 sent. 2 German Pfandbrief Act (PfandBG) (Pfandbrief business),

[...]

\* Working translation submitted by the Association of German Pfandbrief Banks (vdp), not officially licenced by the Federal Ministry of Finance.

(24) Funding enterprises are business enterprises which, for the purpose of funding their own activities or of funding the activities of the beneficiary, dispose of assets or of claims in respect of the transfer of those assets from their business to special purpose vehicles, funding intermediaries, a credit institution seated in a state of the European Economic Area or an entity referred to in § 2 par. 1 no. 1 or no. 3a; the passing on, in addition, by funding enterprises of economic risks without this entailing a transfer of rights is non-prejudicial.

(25) Funding intermediaries are credit institutions which acquire from funding enterprises or other funding intermediaries assets from the business of a funding enterprise or claims in respect of the transfer of those assets in order to dispose of them to special purpose vehicles or funding intermediaries; the passing on, in addition, by funding intermediaries of economic risks without this entailing a transfer of rights is non-prejudicial.

(26) Special purpose vehicles are business enterprises the main object of which is to raise monies by issuing financial instruments or in another manner, or to obtain other economic benefits in order to acquire from funding enterprises or funding intermediaries assets from the business of a funding enterprise or claims in respect of those assets; the additional passing on of economic risks by special purpose vehicles without this entailing a transfer of rights is non-prejudicial.

[...]

## § 2 Exceptions

(1) Notwithstanding paragraphs 2 and 3, the following shall not be considered as credit institutions

1. the Deutsche Bundesbank;

[...]

- 3a. the public debt administration of the Federal Government, of one of its special funds, of a Regional Government or of another state of the European Economic Area and its central banks, insofar as these do not accept deposits or other refundable monies from the public or engage in banking business commercially,

[...]

## PART 2

**Provisions for financial institutions, groups of financial institutions, financial holding-groups, financial conglomerates, mixed activity financial holding companies and mixed activity business enterprises**

### 2a. Funding Register

#### § 22a Enterprise keeping the register

(1) If the funding enterprise is a credit institution or an entity referred to in § 2 par. 1 nos. 1 to 3a and if a special purpose vehicle, a funding intermediary, a credit institution seated in a state

of the European Economic Area or an entity referred to in § 2 par. 1 no. 1 or 3a is entitled to the transfer of a claim of the funding enterprise or of a real estate lien of the funding enterprise by which claims are secured, these assets may be entered in a funding register kept by the funding enterprise; the same shall apply *mutatis mutandis* to registered liens in respect of aircraft and to ship mortgages. A separate section shall be created for each funding transaction.

(2) This sub-section does not give rise to a duty on the part of the funding enterprise or of the funding intermediary to keep a Funding Register. The keeping of the register may only be terminated or transferred subject to the requirements of § 22k.

(3) Any outsourcing of the keeping of the register shall be inadmissible.

(4) Paragraphs 1 to 3 shall apply *mutatis mutandis* to funding intermediaries, the financial institutions or any of the entities referred to in § 2 par. 1 nos. 1 to 3a.

#### § 22b Keeping of the Funding Register for third parties

(1) If the funding enterprise is neither a financial institution nor an entity referred to in § 2 par. 1 nos. 1 to 3a, the funding enterprise's assets referred to in § 22a par.1 sentence 1 to the transfer of which a special purpose vehicle, a funding intermediary or a credit institution seated in a state of the European Economic Area is entitled may be entered in a funding register kept by a financial institution or by Kreditanstalt für Wiederaufbau (KfW, German Reconstruction Loan Corporation). If the Funding Register also contains assets the transfer of which is owed by the enterprise keeping the register or another enterprise, a separate section shall be created within the same funding register for each party obliged to transfer and a sub-section shall be created within such section for each individual funding transaction.

(2) If the funding enterprise is a financial institution for which the keeping of its own Funding Register constitutes an unreasonable burden given the type and scope of its business operations, the supervisory authority shall upon application by the funding enterprise approve the keeping of the Funding Register by another financial institution. The approval by the supervisory authority shall be deemed given unless it is refused within one month from the filing of the application.

(3) Entries made for other financial institutions without the approval of the supervisory authority in accordance with par. 2 having been obtained shall be void.

(4) § 22a paragraphs 2 and 3 shall apply *mutatis mutandis* also in conjunction with par. 4.

#### § 22c Funding intermediary

§§ 22d to 22o shall apply *mutatis mutandis* to Funding Registers kept by a funding intermediary in accordance with § 22a par. 4 or to a funding intermediary in accordance with § 22b par. 4.

## § 22d Funding Register

(1) It shall be admissible to keep the Funding Register in electronic form if it is assured that adequate precautions have been taken against loss of data. The Federal Ministry of Finance shall determine by statutory order, which shall not require the approval of the Bundesrat, details regarding the form of the Funding Register as well as the type and manner of the recording. The Federal Ministry of Finance may assign this authority to the Federal Financial Supervisory Authority (BaFin) by statutory order.

(2) The following shall be entered into the Funding Register by the enterprise keeping the register:

1. the claims or the security to the transfer of which the special purpose vehicles, funding intermediaries, credit institutions seated in a state of the European Economic Area or in entities referred to in § 2 par. 1 no. 1 or no. 3a (beneficiaries) entered in the register as beneficiaries are entitled,
2. the beneficiary,
3. the date of the entry,
4. where an asset serves as security, the legal basis, scope and rank of the security and the date on which the contract containing the legal basis for the collateralization was concluded.

In the cases referred to in nos. 1 and 4 it shall be sufficient if third parties, in particular the Funding Register monitor, the Funding Register administrator, the supervisory authority or an insolvency administrator, are able to clearly define the details to be entered. Where the beneficiary is a Pfandbrief bank, that Pfandbrief bank as well as the cover pool monitor appointed in accordance with § 7 par. 1 Pfandbrief Act (PfandBG) shall be notified of the entry.

(3) If details required in accordance with par. 2 are missing or entries are incorrect or do not allow a clear definition of details to be entered, the assets in question shall not be deemed to be duly entered.

(4) Claims shall also be deemed eligible for entry and may be sold to the beneficiary following entry if the assignment has been precluded by an oral or implied agreement with the debtor. § 354a German Commercial Code (Handelsgesetzbuch – HGB) as well as any statutory prohibitions of disposal shall remain unaffected.

(5) Entries may only be deleted with the beneficiary's consent and, if the beneficiary is a Pfandbrief bank, with the consent of the Pfandbrief bank's cover pool monitor, whereby the date of the deletion must be entered. Incorrect entries may, however, be deleted with the Funding Register monitor's consent; par. 2 sentence 3 shall apply *mutatis mutandis*. The correction, the date of the correction and the Funding Register monitor's consent shall be entered in the Funding Register. A repeated entry without the previous entry having been deleted shall be without legal effect.

## § 22e Appointment of the Funding Register monitor

(1) Each enterprise keeping a register shall appoint a natural person to monitor the Funding Register (Funding Register monitor). His office shall expire upon the termination of the keeping of the register or upon the appointment as Funding Register administrator of a person other than the Funding Register monitor in accordance with § 22l par. 4 sentence 1.

(2) The Funding Register monitor shall be appointed by the supervisory authority at the proposal of the enterprise keeping the register. The supervisory authority shall appoint the proposed person as Funding Register monitor if the latter's independence, reliability and expertise appear to be assured. In making its decision the supervisory authority shall give due consideration to the interests of the beneficiary entered in or to be entered in the Funding Register.

(3) The appointment may be for a limited term; the supervisory authority may dismiss the Funding Register monitor at any time with objective reason. Par. 2 sentence 3 shall apply *mutatis mutandis*. If the Funding Register monitor has an employment or client relationship with a party involved in a specific funding transaction, he shall be suspended from office in respect of this funding transaction.

(4) A deputy Funding Register monitor shall be appointed upon the application of the enterprise keeping the register. Such application shall be admissible at any time. Paragraphs 2 and 3 shall apply *mutatis mutandis* to the appointment and dismissal of the deputy. If the Funding Register monitor is dismissed in accordance with par. 3 sentence 1, if he is suspended from office or if he is prevented from performing his duties he shall be replaced by his deputy.

(5) If there is no Funding Register monitor for a not inconsiderable period of time, if the Funding Register monitor is prevented from performing his duties or if he is suspended from office without having been replaced by a deputy, the supervisory authority shall appoint a suitable Funding Register monitor without hearing the enterprise keeping the register. Par. 2 sentence 3 shall apply *mutatis mutandis*. The enterprise keeping the register shall notify the supervisory authority without delay if a situation referred to in sentence 1 occurs.

(6) The administrator and his deputy are liable towards the register-keeping enterprise and to the beneficiary as a result of their activities due solely in case of intent or gross negligence. The administrator's or deputy's liability for damages shall in the case of gross negligence be limited to 1 million Euros. Such liability for damages may not be contractually excluded or limited. If the administrator's or deputy's liability is covered by insurance, a retention in the amount of one and a half times the annual remuneration as fixed under § 22i par. 1 is to be required. The register-keeping enterprise may conclude the insurance contract on behalf of the administrator or deputy and pay the premiums.

### **§ 22f Relationship of the Funding Register monitor with the supervisory authority**

(1) The Funding Register monitor shall provide the supervisory authority with information on the findings and observations he has made in the course of his activities and shall notify the supervisory authority without being asked of circumstances that indicate that the register is not being properly kept.

(2) The Funding Register monitor shall not be bound by instructions of the supervisory authority.

### **§ 22g Duties of the Funding Register monitor**

(1) The Funding Register monitor shall monitor the proper keeping of the Funding Register. However, his duties shall not include examining to determine whether the assets entered in the register are owned by the funding enterprise or are assets eligible for entry in accordance with § 22d par. 2.

(2) In particular, the Funding Register monitor shall ensure that

1. the Funding Register contains the details required in accordance with § 22d par. 2,
2. the dates entered in the Funding Register are correct and
3. the entries are not subsequently altered.

In addition, the Funding Register monitor shall not be required to examine the correctness of the contents of the Funding Register.

(3) In performing his duties the Funding Register monitor may avail himself of the services of other persons and entities.

### **§ 22h Relationship of the Funding Register monitor with the enterprise keeping the register and the funding enterprise**

(1) The Funding Register monitor shall be entitled to inspect at any time the books and records of the enterprise keeping the register, unless such documents are not related to the keeping of the Funding Register. 2 In the cases referred to in § 22b, the Funding Register monitor shall also have the same powers towards the funding enterprise.

(2) The Funding Register monitor shall be obliged to maintain secrecy in respect of all matters of which he obtains knowledge through examining the books and records of the enterprise keeping the register or of the funding enterprise, if a different entity. The Funding Register monitor may inform or notify the supervisory authority only about facts connected to the monitoring of the Funding Register.

(3) The supervisory authority shall resolve disputes between the Funding Register monitor and the enterprise keeping the register or the funding enterprise, if a different entity.

### **§ 22i The Funding Register monitor's remuneration**

(1) The Funding Register monitor and his deputy shall receive from the register-keeping enterprise an appropriate remuneration the amount of which is fixed by the supervisory authority, and a reimbursement of necessary expenses.

(2) (repealed)

(3) Except in cases referred to in par. 1, benefits by the enterprise keeping the register, the funding enterprise for which the register is kept and the beneficiaries to the Funding Register monitor and his deputy shall be inadmissible.

### **§ 22j Effects of entry in the Funding Register**

(1) In the event of the insolvency of the funding enterprise, assets of the funding enterprise which have been duly entered in the Funding Register may be separated from the assets involved in insolvency proceedings by the beneficiary in accordance with § 47 German Insolvency Code (Insolvenzordnung – InsO). The same shall apply to assets which substitute the assets that have been duly entered in the Funding Register. The beneficiary may object to disposals by way of execution or execution of attachment by taking legal action in accordance with § 771 German Civil Code.

(2) Pleas and defences of third parties in respect of the claims and rights entered in the Funding Register shall not be limited by the entry. If the assets entered in the Funding Register are separated or transferred to the beneficiary or by the beneficiary to a third party, any pleas and defences may be asserted as in the case of an assignment. The provision set down in § 1156 sentence 1 German Civil Code (Bürgerliches Gesetzbuch – BGB) shall not apply. If assets entered in the Funding Register serve to secure other assets, the party providing security may assert against the beneficiary any and all pleas and defences under the contract that contains the legal basis for the collateralization. The provision set down in § 1157 sentence 2 German Civil Code (BGB) shall not apply. § 22d par. 4 in conjunction with § 22j par. 1 sentences 1 and 2 shall, however, remain unaffected.

(3) The funding enterprise may not make a set-off or exercise any rights of retention in respect of the beneficiary's rights to a transfer of the assets that have been duly entered in the Funding Register. Any rights of contestation to which its creditors are entitled under the German Act on Contestation (Anfechtungsgesetz – AnfG) and §§ 129 to 147 German Insolvency Code (InsO) shall remain unaffected.

### § 22k Termination and assignment of the keeping of the register

(1) If all the beneficiaries entered in the Funding Register and their creditors are in agreement, the keeping of the Funding Register may be terminated one month following notification to the supervisory authority. If all the beneficiaries entered in the Funding Register and their creditors are in agreement, the keeping of the Funding Register may be assigned to a suitable financial institution under the supervision of the supervisory authority provided the assets entered in the register are assets of the financial institution assuming the keeping of the register or the requirements set down in § 22b concerning the keeping of the Funding Register for third parties are met.

(2) The keeping of the register shall further be terminated if the enterprise keeping the register is in the estimation of the supervisory authority unsuitable to keep the register. In such a case the keeping of the register shall, under the supervision of the supervisory authority, be assigned to a financial institution which in the evaluation of the supervisory authority is suitable to keep the register. The provisions set down in § 22b concerning the keeping of the Funding Register for third parties shall apply *mutatis mutandis*.

(3) Par. 2 shall not apply if insolvency proceedings are opened in respect of the assets of an enterprise keeping a Funding Register not only for third parties.

### § 22l Appointment of the Funding Register administrator in the event that insolvency proceedings are opened

(1) If insolvency proceedings are opened in respect of the assets of an enterprise that keeps a Funding Register not only for third parties, the insolvency court shall upon the application of the supervisory authority appoint one or two natural persons proposed by the supervisory authority as Funding Register administrator(s). The court may deviate from the supervisory authority's proposal if this appears necessary to ensure proper cooperation between the insolvency administrator and the Funding Register administrator. The Funding Register administrator shall receive, with regard to his appointment, a certificate which he must return to the insolvency court upon termination of his office.

(2) The supervisory authority shall file an application in accordance with par. 1 sentence 1 if this, after hearing the beneficiaries, appears necessary for the proper administration of the assets entered in the Funding Register. The supervisory authority shall propose the Funding Register monitor as Funding Register administrator and, if no Funding Register administrator exists or if he is permanently prevented from performing his office, it shall propose his deputy or another suitable natural person. The Funding Register administrator shall be dismissed for good cause upon the application of the supervisory authority.

(3) If the appointment of a second Funding Register administrator appears necessary for the proper administration of the assets entered in the Funding Register the supervisory authority may, after hearing the beneficiaries, file a further application in accordance with par. 1 sentence 1. If the supervisory authority files such an application it shall propose the

deputy of the Funding Register monitor or, if no such Funding Register monitor exists, another suitable natural person.

(4) The office of the Funding Register monitor shall expire upon the appointment as Funding Register administrator of a person other than the Funding Register monitor. The office shall be continued by the Funding Register administrator. Sentences 1 and 2 shall apply *mutatis mutandis* to the Funding Register monitor's deputy.

### § 22m Announcement of the appointment of the Funding Register administrator

(1) The insolvency court shall notify the competent register court without delay of the appointment and the dismissal of the Funding Register administrator and publicly announce same. The appointment and dismissal of the Funding Register administrator shall be entered in the register of companies in accordance with the notification *ex officio*. The entries shall not be announced. The provisions set down in § 15 German Commercial Code (HGB) shall not apply.

(2) If rights of the enterprise keeping the Funding Register are entered in the Funding Register, in respect of which rights an entry exists in the land register, the appointment of the Funding Register administrator shall at the request of the insolvency court or of the Funding Register administrator be entered in the land register if in light of the type of the rights and the relevant circumstances it is to be feared that the beneficiaries' interests would be impaired if no such entry were made. Sentence 1 shall apply *mutatis mutandis* to rights of the enterprise keeping the register that are entered in the shipping register, the shipbuilding register or the register of liens on aircraft.

### § 22n Legal position of the Funding Register administrator

(1) The Funding Register administrator shall be supervised by the insolvency court. The insolvency court may at any time request from the Funding Register administrator, in particular, individual pieces of information or a report on the current position and the management. In addition, the duties of the Funding Register monitor shall rest with the Funding Register administrator. The Funding Register administrator and the insolvency administrator shall provide each other with any information that may be of significance to the insolvency proceedings in respect of the assets of the enterprise keeping the register and to the administration of the assets entered in the Funding Register.

(2) Inasmuch as the enterprise keeping the register was authorized to administer the assets entered in the Funding Register and to dispose of them, this right shall be transferred to the Funding Register administrator. The Funding Register administrator shall, in cooperation with the insolvency administrator, use all the facilities of the enterprise keeping the register that are necessary to administer the assets entered.

(3) If following the appointment of the Funding Register administrator the enterprise keeping the register disposes of an asset entered in the Funding Register, such disposal shall be void. The provisions set down in §§ 892, 893 German Civil Code (BGB), in §§ 16, 17 Act governing Rights in respect of Registered Ships and Ships under Construction (SchiffsRG) and in §§ 16, 17 Act governing Rights in Aircraft (LuftFzRG) shall remain unaffected. If the enterprise keeping the register has made a disposal on the day of the appointment of the Funding Register administrator, it shall be deemed to have made the disposal after the appointment.

(4) In managing the Funding Register the Funding Register administrator shall exercise the due care of an orderly and conscientious manager. If the Funding Register administrator violates his duties the beneficiaries and the enterprise keeping the register may claim compensation for any resultant loss. This shall not apply if the Funding Register administrator is not responsible for the violation of duty.

(5) The Funding Register administrator shall receive from the supervisory authority adequate remuneration and a reimbursement of his expenses. The amounts paid shall be refunded separately to the supervisory authority by the beneficiaries in proportion to the number of the assets entered for them and shall be advanced at the request of the supervisory authority. Inasmuch as the Funding Register is kept for third parties, these third parties shall together with the beneficiaries be jointly and severally liable to make such refunds and advances. § 22i paragraphs 2 and 3 sentence 1 shall apply *mutatis mutandis*. § 22i par. 3 sentence 2 shall apply *mutatis mutandis* provided the supervisory authority is to file for dismissal with the insolvency court.

#### § 22o Appointment of the Funding Register administrator in case of imminent insolvency

(1) Subject to the conditions set down in § 46a the court at the seat of the enterprise keeping the register shall upon the application of the supervisory authority appoint one or two persons as Funding Register administrator(s). The supervisory authority shall file an application in accordance with sentence 1 if, after hearing the beneficiaries, this appears to be necessary for the proper administration of the assets entered in the Funding Register. In case of imminent danger such hearing shall be dispensed with. In such a case the hearing shall take place subsequently without delay.

(2) The provisions set down in §§ 22l to 22n shall apply *mutatis mutandis* to the appointment and dismissal as well as the legal position of a Funding Register administrator appointed under these circumstances, provided the court at the seat of the enterprise keeping the register takes the place of the insolvency court. A good reason within the meaning of § 22l par. 2 sentence 3 shall be deemed to exist in particular if the provisions set down in § 46a are no longer met. In such a case the supervisory authority shall appoint the Funding Register monitor from among the Funding Register administrators.

(3) If insolvency proceedings are opened in respect of the assets of the enterprise keeping the register following the appointment of the Funding Register administrator in accordance

with paragraphs 1 and 2, the Funding Register administrator shall be deemed to be appointed by the insolvency court upon the opening of the insolvency proceedings for the time after insolvency proceedings have been opened. The insolvency court shall take the place of the court at the seat of the enterprise keeping the register. The court at the seat of the enterprise keeping the register shall hand over to the insolvency court all the records relating to the appointment and supervision of the Funding Register administrator.

#### § 45c Special commissioner

[...]

(7) The special commissioner shall be liable for intent and gross negligence. In the case of negligent conduct, the special commissioner's liability for damages shall be limited to 1 million Euros. If this institution is a public limited company ("Aktiengesellschaft") whose shares are admitted to trading on the regulated market, the liability for damages shall be limited to 50 million Euros.

[...]

# Statutory Order on the Form of the Funding Register pursuant to the German Banking Act (KWG) and on the Type and Manner of Recording\*

(Funding Register Statutory Order – Refinanzierungsregisterverordnung RefiRegV)

of December 18, 2006

On the basis of Section 22d par. 1 sent. 2 German Banking Act (Kreditwesengesetz – KWG), which was added by Article 4a, no. 4 of the Act of September 22, 2005 (Federal Law Gazette I p. 2809), in conjunction with § 1 no. 5 Statutory Order on the Transfer of Authorizations to Issue Statutory Orders to the Federal Financial Supervisory Authority of December 13, 2002 (Federal Law Gazette 2003 I p. 3), § 1 no. 5, last amended by Article 1 of the Statutory Order of November 17, 2005 (Federal Law Gazette I p. 3187), the Federal Financial Supervisory Authority orders:

## **PART 1**

### **Scope of application; general provisions**

#### **§ 1 Scope of application; definitions**

(1) This statutory order regulates the requirements in terms of the form of the Funding Register pursuant to Sections 22a to 22o German Banking Act as well as the type and manner of recording.

(2) Deletion notes shall also be deemed to be entries within the meaning of this statutory order.

#### **§ 2 Form of the Funding Register**

(1) The Funding Register may be kept in paper form or, as provided for in Part 2, as an electronic register.

(2) If an enterprise keeping the register converts the keeping of the register from an electronic register to a register in paper form, the data in the register shall be printed out in their entirety and the keeping of the register shall be continued in paper form. In the event that a register kept in paper form is converted to an electronic register, all the data in the register shall be recorded in the electronic register.

#### **§ 3 Completeness and correctness of the Funding Register**

Entries are to be made in a permanent manner in such a way that any changes and deletions that are made subsequently may be recognized as such at any time. It shall be ensured by technical and organizational measures that the original content remains ascertainable.

#### **§ 4 Description of the Funding Register and of the sections and sub-sections**

(1) The Funding Register must bear the heading “Funding Register” (“Refinanzierungsregister”), the name of the enterprise keeping the register and, subject to par. 3, the name of the party obliged to transfer.

(2) Inasmuch as, pursuant to Section 22a par. 1 sent. 2 German Banking Act, separate sections are to be created within the Funding Register, in addition to the description “Section no. ... of the Funding Register” these must bear the description of the funding transaction for which the section is created.

(3) Inasmuch as, pursuant to Section 22b par. 1 sent. 2 German Banking Act, a separate section is to be created within the Funding Register for each party obliged to transfer, in addition to the description “Section no. ... of the Funding Register” it must bear the name of the party obliged to transfer, for whom the section is created. If sub-sections are to be created within a section, these must bear in addition to the description “Sub-section no. ... of section no. ... of the Funding Register” the description of the funding transaction for which the sub-section is created.

(4) The Funding Register shall contain a list of the sections that are being kept in the register. If sub-sections are created within a section, a list of these is to be kept in the respective section.

\* Working translation submitted by the Association of German Pfandbrief Banks (vdp), not officially licenced by the Federal Ministry of Finance.

## § 5 Type and Manner of the Recording

- (1) Each asset to be entered in the Funding Register is to be entered with a consecutive number within the relevant section or sub-section. The number may not be reassigned after the asset is deleted. Backdated entries shall be inadmissible.
- (2) Entries are to be made as follows subject to the provision set down in Section 22d par. 2 sent. 2 German Banking Act in keeping with form RR shown in Annex 1:
  1. The columns 1 to 5 are to be given the heading “Description of the asset” (“Bezeichnung des Vermögensgegenstands”). In column 1, the consecutive number in accordance with par. 1 is to be stated under letter a, and the file reference number allocated by the funding enterprise under letter b.
  2. Insofar as the funding transaction refers to a claim, the claim is to be described in column 2 (Section 22d par. 2 no. 1 alternative 1 German Banking Act). As a general principle, the debtor is to be stated in sub-column a, the currency in sub-column b, the initial nominal amount in sub-column c and, if different from the file reference number in column 1 letter b, the loan/transaction number in sub-column d.
  3. Where the asset to be entered is a real estate lien, a lien in respect of an aircraft or a ship mortgage, these are to be described in column 3 (Section 22d par. 2 no. 1 alternative 2, no. 4 German Banking Act).
    - a) The asset lent against is to be entered in sub-column a. Where the asset is a property, either the description in the inventory of the land register (local sub-district, field, cadastral parcel) may be taken over or reference may be made to the land register folio. In the latter case, the address must also be stated. Where an aircraft is involved, the relevant aircraft register folio is to be entered. Where a ship is involved, the relevant shipping register folio is to be entered.
    - b) The section of the register in which the lien is entered is to be stated in sub-column b.
    - c) The consecutive number of the entered right in the section entered in sub-column b is to be stated in sub-column c.
    - d) The currency of the lien is to be stated in sub-column d.
    - e) The amount of the lien is to be stated in sub-column e.
    - f) The extent to which the collateral serves as an asset for funding purposes is to be entered in sub-column f.
    - g) The legal basis for the collateral is to be specified in sub-column g.
    - h) The date on which the contract containing the legal basis for the collateralization was concluded is to be stated in sub-column h.
  4. The name and address of the beneficiary are to be entered in column 4 (Section 22d par. 2 sent. 1 no. 2 German Banking Act).
  5. The point in time (date and time) of the entry in the Funding Register is to be stated in column 5 (Section 22d par. 2 sent. 1 no. 3 German Banking Act).
  6. Deletion notes are to be entered in column 6. The column number (sub-column a) and, if applicable, the amount of the entry to be deleted (sub-column b) as well as the date including the time of the deletion (sub-column c) are to be stated. Inasmuch as the deletion is noted at a separate place in the register, in addition to the deletion note in column 6 at least also the details concerning the asset to be deleted are to be repeated in columns 1 and 2/3. Where an incorrect entry is to be deleted or corrected, the cover pool monitor’s

approval required pursuant to Section 22d par. 5 sentences 2 and 3 German Banking Act must be unequivocally allocated to the respective deletion note of the enterprise keeping the register.

7. Column 7 is reserved for miscellaneous remarks, e.g. for information that is necessary in addition to the other details for the unequivocal legal allocation of the asset or which facilitate allocation. If need be, the initials of the person making the entries may also be affixed in column 7.

## § 6 Entry of foreign security interests

Entries of foreign security interests are to be made in accordance with § 5. Where the description of the foreign security interests or of the assets lent against in the respective public registers deviates from that required in column 3 of the form RR, this description is to be used. The sub-columns a to c of column 3 may be modified if need be. Where the sub-columns a to c of column 3 do not suffice for the details required in accordance with sent. 2, supplementary sheets may be added which shall become part of the Funding Register. The supplementary sheets are to be marked using the consecutive number of the respective entry from column 1 letter a of the form. Insofar as properties, aircraft or ships located abroad are not included in public registers, the details that are customary under the respective legal system and make an unequivocal identification of the respective asset possible are to be entered.

## § 7 Protection of the Funding Register

The Funding Register is to be afforded special protection against unauthorized access and against damage or destruction by external forces such as fire or water

### PART 2

#### Additional requirements concerning registers kept in electronic form

## § 8 Definition and general requirements

- (1) The content of the electronic Funding Register must be permanently capable of reproduction without change in a legible form and must be permanently archived in an audit-proof manner
- (2) It must be possible to reproduce the content of the electronic Funding Register in a legible form on a display screen and in printouts in such a way that the form and content of the entries are represented in their entirety. The content of the electronic Funding Register must be capable of printout in its entirety at any time

**§ 9 Technical and organizational measures to ensure data protection and data security**

(1) The data processing systems employed must comply with the level of technology and the requirements set down in the Annex to § 9 sent. 1 Federal Data Protection Act (Bundesdatenschutzgesetz – BDSG). In particular, they must ensure that

1. their functions can only be used when the user proves his identity towards the system in a secure manner (identification and authentication),
2. the delegated rights of use are administered in the system (administration of authorizations),
3. the delegated rights of use are checked by the system (authorization check),
4. an audit-proof recording of all accesses (input, read, copy, modify, delete, block) takes place (audit capability),
5. systems employed can be recovered without security risks (recovery),
6. any falsifications of the stored data can be immediately detected by technical checking mechanisms (falsification-proof data) and
7. any malfunctions are reported immediately (dependability).

(2) The enterprise keeping the register shall hold in safekeeping at least one complete backup copy of the electronic Funding Register. The backup copy shall be stored on a different data carrier than the Funding Register and updated at least at the end of each working day to the status of the Funding Register at that point in time.

**PART 3**

**Closing provisions**

**§ 10 Transitional provision**

Funding Registers which were established on the basis of Sections 22a to 22o German Banking Act before this statutory order entered into force may be continued in the present manner until June 30, 2007.

**§ 11 Entry into force**

This Statutory Order shall enter into force on the day after promulgation.

Bonn, December 18, 2006  
 President of the Federal Financial Supervisory Authority  
 Sanio

1		Description of the asset										Deletions			Miscellaneous	
		2		3		4		5		6		7				
a)	b)	c)	d)	a)	b)	c)	d)	e)	f)	g)	h)	a)	b)	c)	7	
																Debtors

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