

# **Regulation on the determination of mortgage lending values of properties in accordance with § 16 pars. 1 and 2 of the Pfandbrief Act**

(Beleihungswertermittlungsverordnung – BelWertV)

of 12 May 2006, as last amended by Art. 5 of the Pfandbrief Law Amendment Regulation (Pfandbriefrechtliche Änderungsverordnung) of 4 October 2022 (Federal Law Gazette I p. 1614)

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

## **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 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) <sup>1</sup>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 characteristics of the property, the normal and local market conditions, the current use and alternative appropriate uses of the property. <sup>2</sup>The determination of sustainable characteristics of the property and their influence on the valuation requires a long-term view of market conditions. <sup>3</sup>The period under consideration shall be specified and its appropriateness comprehensibly explained.

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

(1) <sup>1</sup>To determine the mortgage lending value, the income value (§§ 8 to 13) and the depreciated replacement cost value (§§ 14 to 17) of the property serving as cover are to be determined separately; the comparative value (§ 19) may also be determined instead of the depreciated replacement cost value in the case of single-family and semi-detached houses as well as condominium ownership and part ownership. <sup>2</sup>Of decisive importance to the determination of the mortgage lending value is as a rule the income value, which must not be exceeded. <sup>3</sup>If the depreciated replacement cost value or, in the case of sentence 1 second half sentence, the comparative value of the property serving as collateral is more than 20 percent below the income value, a special review of the sustainability of the adopted underlying income and its capitalisation is necessary: in this context, the same assumptions, in particular with regard to taxation, are to be taken into account within the scope of the control review for the cost and income approaches. <sup>4</sup>If the initially determined Income value is confirmed, the result of the review requires a comprehensible justification, otherwise the income value is to be reduced accordingly.

(2) <sup>1</sup>In the case of single-family and semi-detached houses as well as condominiums, the mortgage lending value may take its bearings from the depreciated replacement cost value or the comparative value and a determination of the income value may be dispensed with if the property being valued is without doubt suitable for owner-occupation due to the quality of property and the location and is in lasting demand by potential buyers for owner-occupation. <sup>2</sup>In the event that the property is still let, the associated reduction in value is to be determined in a comprehensible manner and deducted from the mortgage lending value. <sup>3</sup>In the case of single-family and semi-detached houses, however, subject to § 19 par. 2, 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 to the property to be valued also with regard to the size of of the living space. <sup>4</sup>When determining the mortgage lending value based on the depreciated replacement cost value, regular reviews must be carried out as to whether a deduction from the depreciated replacement cost value

is necessary due to characteristics of the property and the local market conditions, taking particular account of sustainability.

**(3)** <sup>1</sup>If, in the course of the valuation, deferred maintenance, building defects, or building damage are identifiable that have not yet been included in an appropriate manner in the determination of the income value, the depreciated replacement cost value and the comparative value, the capital expenditure required to remedy them that is known or prudently estimated on the valuation date shall be taken into account as a separate deduction from the mortgage lending value. <sup>2</sup>The aforementioned also applies to other capital expenditure, in particular for measures required to enable the property to be valued in the event of changes of use.

**(4)** <sup>1</sup>In the case of properties under construction, the mortgage lending value can be derived from the status value. <sup>2</sup>The latter is the total of the land value (§ 15) and the proportional value of the building(s). <sup>3</sup>The proportional value of the building(s) is calculated from the value of the building(s) of the completed property (§ 16) and the achieved status of construction. <sup>4</sup>The status of construction that is applied must be established by a person selected by the Pfandbrief bank who possesses a high level of professional expertise and is not involved in the planning or execution of the construction; § 7 par. 1 sentence 1 applies accordingly. <sup>5</sup>In cases in which the income value of the property when completed as planned is below its depreciated replacement cost value, the status value must not exceed the sum of the land value and the proportional income value of the building(s), which is equivalent to the respective status of construction as a percentage. <sup>6</sup>Particularly, to take into account the situation on the property market, it shall be examined whether a special sustainability discount, which considers the marketability of the not yet completed property, must be applied to the determined status value.

## **PART 2**

### **REPORT AND VALUER**

#### **§ 5 Report**

**(1)** <sup>1</sup>The mortgage lending value must be determined by way of a report. <sup>2</sup>The property to be valued shall be inspected within the scope of the valuation.

**(2)** <sup>1</sup>The report must be conducted by one or more valuers appointed by the Pfandbrief bank in general or on a case by case basis. <sup>2</sup>In special cases, for example within the scope of a cooperation 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 and
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)** <sup>1</sup>The report must comment on the quality of the property and location, the regional property market, the legal and actual attributes of the property and on the property's eligibility as collateral for Pfandbrief coverage, on its usability and marketability. <sup>2</sup>The report must also deal with the question of whether a sufficiently large pool of potential buyers and users exists for the surveyed property and, consequently, the sustainable profitability of the property or continuous demand from owner-occupiers is assured on account of its suitability for various uses 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 modernisation risk (§ 11 par. 7) and the remaining useful economic life (§ 12 par. 2). The most important property data, valuation parameters and assumptions made must be stated and explained in a readily comprehensible manner.

**(4)** All circumstances which affect the income value, the depreciated replacement cost value or the comparative value, in particular any restrictions to use, tenant easements and other easements, duties to tolerate, pre-emptive rights, redevelopment notes, building encumbrances and all other restrictions and encumbrances, must be named, complied with and, if necessary, taken into consideration by lowering the value.

## **§ 6 Valuer**

<sup>1</sup>The valuer must, in respect of their 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. <sup>2</sup>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 report, in particular of the respective property market and type of property.

## **§ 7 Independence of the valuer**

**(1)** <sup>1</sup>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. <sup>2</sup>They must not be related to or have any other legal or business relationship with the borrower, nor may they have interests of their own in the outcome of the report. <sup>3</sup>Further, the valuer may not establish the mortgage lending value or process the loan.

**(2)** Reports conducted by valuers employed by the Pfandbrief bank 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 organisation, 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 to 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) <sup>1</sup>The net income must be reduced by the amount that results from the appropriate interest rate in respect of the land value. <sup>2</sup>The relevant capitalisation rate for capitalisation in accordance with § 12 is to serve as the basis for the interest rate. <sup>3</sup>If the site is substantially larger than is appropriate for the use of the building(s) and where an additional use or exploitation of a portion of the site is permissible and possible, the land value of this portion of the site is not to be included in the calculation of the land value capitalisation. <sup>4</sup>The additional use and exploitation of this portion of the site 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) <sup>1</sup>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. <sup>2</sup>Where the sustainable rent is in excess of the contractually agreed rent, the contractually agreed rent is as a rule to be stated. <sup>3</sup>The lettable floor area is equivalent to the net lettable living space when the property is used for residential purposes and the permanently lettable usable floor area when the property is used for commercial purposes. <sup>4</sup>In the event of mixed types of use types, the proportional income for each type of use must be stated separately. <sup>5</sup>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 average achievable turnover per room or bed, having regard to region, category and the standard of fixtures and fittings.

**(3)** Paragraph 2 shall apply in the case of properties with gastronomy as their main use, as well as cinemas and comparable leisure properties with the proviso that the average turnover per seat shall be derived.

**(4)** Where there are structural or prolonged vacancies, an examination must be made in particular to establish whether the property is at all profitable on the basis of the current market situation and its condition or whether economic use at the estimated gross income may still be expected in the foreseeable future.

### **§ 11 Operating expenses**

**(1)** <sup>1</sup>The gross income calculated in accordance with § 10 must be reduced by the operating expenses normally to be covered by the landlord. <sup>2</sup>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)** <sup>1</sup>The individual cost items shall not be lower than the minimum rates set out in Annex 1. <sup>2</sup>Any recognisable, acute loss of rental income risk that is in excess of the stated individual cost item must be stated as a separate value deduction in the amount of the expected loss. <sup>3</sup>The minimum amount for the deduction of the costs listed in pars. 3 to 5 must total at least 15 percent of the gross income. <sup>4</sup>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)** <sup>1</sup>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 their intended use during their useful life. <sup>2</sup>They comprise ongoing maintenance and regular repairs of the building(s), but not the modernisation of same.

**(5)** Loss of rental income risk within the meaning of par. 1 sentence 2 is the risk of a reduction of 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)** <sup>1</sup>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. <sup>2</sup>They are to be shown as a percentage of the reconstruction costs.

## **§ 12 Capitalization of net income**

**(1)** <sup>1</sup>The net income less the land value capitalisation amount in respect of the land value calculated in accordance with § 9 par. 2 is to be capitalised using a multiplier based on the remaining useful life of the building(s) and the capitalisation rate. <sup>2</sup>The multiplier V is calculated as  $V = (q^n - 1) / (q^n \cdot z)$ , where n = remaining useful life,  $q = 1 + z$  and z = capitalisation rate.

**(2)** <sup>1</sup>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. <sup>2</sup>The remaining useful economic life is to be estimated for the specific property on the basis of how long the economic use of the property appears to be assured with the assumed income, taking into consideration the user requirements that will change at increasingly shorter intervals. <sup>3</sup>For properties located in Germany, the maximum values for the useful life of building(s) specified in Annex 2 are to be taken into consideration.

**(3)** <sup>1</sup>The capitalisation 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. <sup>2</sup>It must be derived from the relevant regional long-term and use-specific market developments. <sup>3</sup>Different types of use must be considered separately in each case.

**(4)** <sup>1</sup>Subject to sentence 3 and paragraph 5, the capitalisation rate for properties located in Germany shall be, in the case of residential use, at least 3 percentage points above the yield of 30-year German federal bonds as published by the Deutsche Bundesbank, rounded in accordance with DIN 1333, and, in the case of commercial use, at least 4 percentage points above said yield, plus, in both cases, any markups to be taken into account for individual types of use in accordance with Annex 3. <sup>2</sup>If, on 30 November of any year the yield on 30-year German federal bonds as published by the Deutsche Bundesbank is at least 0.5 percentage points higher or lower than at the beginning of the month preceding the last change in the minimum capitalisation rates, these shall change on 1 January of the following year by the corresponding percentage points, rounded to the first decimal place in accordance with DIN

1333. Subject to paragraph 5, the minimum capitalisation rate for residential use shall be at least 3.5 percent and at most 5.5 percent, and for commercial use at least 4.5 percent and at most 6.5 percent, plus any markups to be taken into account for individual types of use in accordance with Annex 3. <sup>4</sup>BaFin shall publish the amended capitalisation rates on its website without delay after the date specified in sentence 2.

**(5)** <sup>1</sup>The minimum capitalisation rates specified in par. 4 sentences 1 and 3 may be undercut by a maximum of 0.5 percentage points for residential, retail, office, warehouse and logistics properties if the properties concerned are prime properties. <sup>2</sup>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. good infrastructure,
4. good design,
5. high-quality fixtures and fittings,
6. high-quality construction,
7. especially high marketability and
8. a very good state of the property.

Such undercutting requires a comprehensible justification in the report.

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

**(1)** <sup>1</sup>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), then, notwithstanding § 8 par. 3, only the land value in accordance with sentence 4 is to be stated as the income value of the property serving as collateral. <sup>2</sup>In this case, the land value is to be reduced by the usual costs that would be incurred to bring the site in line with comparable undeveloped sites. <sup>3</sup>Usual costs within the meaning of sentence 2 are in particular the costs for the demolition of the building(s). <sup>4</sup>The land value thus determined, reduced by the demolition costs, shall be discounted from the time when the undeveloped site would be available to the valuation date, using the capitalisation rate to be applied for the permissible use.

**(2)** <sup>1</sup>Where the remaining useful life of the building(s) is less than 30 years, the part of the net income attributable to the land value is also to be capitalised in respect of the remaining useful life of the building(s), or the determined costs for the demolition of the building(s) must be deducted from the Income Value. <sup>2</sup>With regard to the discounting of the demolition costs, par. 1 sentence 4 shall apply.

**(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 adopted for the calculation of the land value and, if applicable, specifically describe the preconditions for a replacement building and the requisite expenses.

## SECTION 2

### COST APPROACH

#### § 14 Basis of the cost approach

<sup>1</sup>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. <sup>2</sup>The reduction in value due to age in accordance with § 17 is to be taken into account. <sup>3</sup>The outdoor installations also belong to the building(s). <sup>4</sup>If the remaining useful life of the building is less than 30 years, the demolition costs of the building shall be determined and deducted from the depreciated replacement cost value. <sup>5</sup>In respect of the discounting of the demolition costs, § 13 par. 1 sentence 4 shall apply accordingly.

#### § 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 access to the site,
  4. the most important commercial and transport connections,
  5. possibilities of connections to supply and waste disposal networks,
  6. the development contributions for local public infrastructure 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 the permissible use.

#### § 16 Value of the building(s)

- (1) <sup>1</sup>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). <sup>2</sup>The stated construction costs must be appropriate for the respective region and the specific property. <sup>3</sup>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 room layout ,
  3. the type of construction and the materials used for the shell construction, and
  4. the fixtures and fittings and the value-affecting auxiliary installations.

<sup>4</sup>As a rule, the costs for outdoor installations may not be more than 5 percent of the construction value.

- (2) <sup>1</sup>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. <sup>2</sup>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)** <sup>1</sup>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. <sup>2</sup>In determining the reduction in value one may, depending on the type and use of the building(s), proceed from a linear 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 modernisation works, 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 adjusted remaining useful life and the typical useful life for the building(s).

### **§ 18 (repealed)**

## **SECTION 3**

### **COMPARISON APPROACH**

#### **§ 19 Determination of the comparative value**

**(1)** <sup>1</sup>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. <sup>2</sup>The comparable prices may be extracted from collections of purchase prices or of other market data. <sup>3</sup>A safety margin of at least 10 percent must be deducted from the initial value determined in this way.

**(2)** <sup>1</sup>Notwithstanding par. 1 sentence 2, in the case of single-family and semi-detached houses as well as of condominiums, the comparative value may also be determined using computer-assisted database-supported valuation models if their suitability and the underlying data comprehensibly derived on the basis of suitable statistical models are validated at least annually by a qualified body independent of the system provider and database provider. <sup>2</sup>The valuation results must also be reviewed by the Pfandbrief bank at regular intervals within the scope of quality assurance; § 24 par. 2 sentence 3 shall apply accordingly with the proviso that, in the case of lendings on single-family and semi-detached houses, the cost approach is

to be used for the review. The samples must, in particular, also be representative according to the type and regional location of the properties.

## **SECTION 4**

### **SPECIAL FEATURES OF INDIVIDUAL PROPERTIES**

#### **§ 20 Building land**

<sup>1</sup>When valuing building land, both its development status and the future demand for building sites are to be examined. <sup>2</sup>The report must comment on the building rights, stage of development and potential contamination. <sup>3</sup>The right to build may be considered only if it is secured. <sup>4</sup>§ 15 is to be applied accordingly.

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

<sup>1</sup>When lending against hereditary building rights, the remaining term is to be taken into consideration. <sup>2</sup>Restrictions resulting from the hereditary building right must be sufficiently taken into consideration by appropriate value deductions. <sup>3</sup>In the valuation report it must be explained whether and how long the hereditary building right appears to be suitably exploitable taking into account its remaining term and, upon its expiry, the agreed compensation arrangements for the building. <sup>4</sup>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)** <sup>1</sup>In the case of undeveloped sites (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. <sup>2</sup>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 soil quality and the climate conditions, when deriving the value of the land.

**(3)** Inasmuch as developed sites are to be included in the valuation, a separate value for the buildings may only be adopted if the buildings can be used independently and also outside the respective agricultural operation.

#### **§ 23 Machinery and operating facilities**

<sup>1</sup>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. <sup>2</sup>The value of such

essential elements is, if they are covered by the real estate lien, to be estimated separately taking into consideration a normal depreciation and sufficient deductions for wear and tear and technical depreciation.

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

**(1)** <sup>1</sup>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 600,000. <sup>2</sup>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. <sup>3</sup>Instead of the report, a simplified valuation is to be conducted or commissioned which must meet the other requirements of this Regulation.

**(2)** <sup>1</sup>The person who in the case of par. 1 conducts the valuation must be sufficiently trained and qualified to determine the mortgage lending value. <sup>2</sup>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. <sup>3</sup>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; § 19 par. 2 sentence 3 and §§ 6 and 7 are to be applied accordingly.

**(3)** <sup>1</sup>In deviation from § 5 par. 1 sentence 2, 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 within this estate in the last two years,
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, or
5. alternately, if the property to be valued has a remaining useful life of at least 40 years, it may be viewed by video broadcast, provided that
  - a) the valuer thereby obtains at least an approximately complete impression of the entire property, its condition and its surroundings,
  - b) the viewing of the property carried out by video broadcast is documented in terms of its scope and findings, as well as by means of a collection of pictures (screenshots), and

- c) a discount of at least 5 percent is applied to the result of the determination of the mortgage lending value.

<sup>2</sup>The reasons for not conducting the inspection must be documented in a readily comprehensible manner.

**(3a)** <sup>1</sup>Notwithstanding § 5 par. 1 sentence 2, 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, or
2. if a reduction of 10 percent from the result of the determination of the mortgage lending value is taken into account.

<sup>2</sup>The reasons for the dispensation from the internal inspection must be documented in a comprehensible manner.

**(4)** <sup>1</sup>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 for same may serve as a basis if

1. these valuations meet the requirements of par. 1 sentence 3 and of par. 2 sentences <sup>1</sup> and 2,
2. a specialised 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.

<sup>2</sup>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. <sup>3</sup>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. <sup>4</sup>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 Special features cross-border lendings**

**(1)** The determination of the mortgage lending value of properties located outside of Germany is to be conducted in accordance with the other provisions of this Regulation unless otherwise stipulated in pars. 2 to 5.

**(2)** <sup>1</sup>When determining the mortgage lending value, essential information, data and assessments 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. <sup>2</sup>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 § 5 par. 1 sentence 2, par. 2 sentences 1 and 3 and par. 3 as well as of §§ 6 and 7. <sup>3</sup>If, in the case of a real estate consumer loan agreement, the country-specific report is commissioned by the borrower in deviation from sentence 2 on the basis of national requirements or market standards, it may only be used as a basis if the independent preparation of an objective report, not influenced by the borrower, appears to be guaranteed by the fact that the instructed valuer is subject to relevant professional regulations, and non-compliance with said regulations is subject to sanctions. <sup>4</sup>The report, including compliance with the aforementioned professional regulations, must also be verified by an independent national body recognised for these purposes on the basis of binding standards in a sufficient and comprehensibly documented manner. <sup>5</sup>The data and parameters taken from the country-specific report must be made identifiable in the mortgage lending value report to be prepared in accordance with § 5 par. 1. <sup>6</sup>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. In cases where no comparative prices are available for the determination of land values outside of Germany, other suitable methods for the determination of the land value can be used as an alternative; in this case, it must be ensured that the determination of land value is carried out independently of the determination of the income value.

**(3)** In deriving the capitalisation 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 perpetual remaining useful life 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 capitalisation rate.

## **SECTION 6**

### **REVIEW OF THE DETERMINATION OF THE MORTGAGE LENDING VALUE**

#### **§ 26 Review of the bases of the determination of the mortgage lending value**

**(1)** <sup>1</sup>The mortgage lending value shall be monitored at least annually. 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. <sup>2</sup>In particular, this applies when the general price level in the respective regional property market has fallen to an extent that jeopardises the safety of the lending. <sup>3</sup>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. <sup>4</sup>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, transitional provisions**

**(1)** This Regulation shall enter into force on 1 August 2006.

**(2)** <sup>1</sup>For mortgage lending value determinations made on the basis of the version of this Regulation that was applicable up to 7 October 2022, the provisions of the aforementioned version of this Regulation may continue to be used as a basis from 9 October 2022, with the exception of § 26 par. 1. <sup>2</sup>After 8 October 2022, BaFin shall publish on its website without delay the minimum capitalisation rates pursuant to § 12 par. 4 sentence 1 on the basis of the yield on a 30-year German federal government bond published by the Deutsche Bundesbank for 30 September 2022, which shall apply until an adjustment is made pursuant to § 12 par. 4 sentence 2.

## **Minimum rates of the individual cost items for the determination of the operating expenses**

### **Management costs**

- a) Residential building  
For apartments, single-family houses, semi-detached houses, condominiums, garages and underground parking spaces: The amounts specified in Annex 3 (to § 12 par. 5 sentence 2) in the applicable version of the German Ordinance on Real Estate Valuation (Immobilienwertermittlungsverordnung)
- b) Commercial properties  
1 percent 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 metre of living space or floor area (excluding incidental building costs and outdoor installations). 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) Warehouses, production plants, simple-standard commercial properties and self-service consumer markets: 0.8 percent
- b) Residential buildings and medium-standard commercial buildings: 0.5 percent
- c) High-grade office and retail properties and other commercial properties: 0.4 percent

### **Loss of rental income risk**

- a) Residential buildings: 2 percent
- b) Commercial properties: 4 percent

### **Modernization risk**

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

- a) Low modernisation risk  
(e.g., larger office buildings, apartment, office and commercial buildings with special features regarding fixtures and fittings, simple-standard retail): 0.2 percent
- b) Medium modernisation risk  
(e.g., inner city hotels, higher-standard retail, simple-standard leisure properties): 0.5 percent
- c) High modernisation risk  
(e.g., rehabilitation facilities, clinics, higher-standard leisure properties, hotels and especially high-standard retail properties): 0.75 percent

**Annex 2** (to § 12 par. 2)

**Maximum term for the useful life of building(s) located in Germany**

- A) Residential use  
Apartment buildings: 80 years
  
- B) Commercial use
  - a) Commercial and office buildings: 60 years
  - b) Department stores, shopping centres, hotels, properties used for agricultural purposes, clinics, rehabilitation facilities, nursing homes, warehouses and logistics properties, industrial properties and multi-storey car parks: 40 years
  - c) Leisure properties (e.g. sports facilities), self-service and speciality stores, consumer markets and petrol stations: 30 years

**Annex 3** (to § 12 par. 4)

**Markups to be taken into account in the minimum capitalisation rates pursuant to § 12 par. 4 for individual types of use**

- A) Department stores, self-service and speciality stores, hotels, clinics, rehabilitation facilities, nursing homes, properties used for agricultural purposes, consumer markets, shopping centres, leisure properties, multi-storey car parks, petrol stations, warehouses and logistics properties: 0.5 percentage points
  
- B) Industrial properties: 1.0 percentage points