

# § PfandBG

## PFANDBRIEF ACT

- Regulation on Pfandbrief reporting requirements (Pfandbrief-Meldeverordnung)
- Net present value Regulation (Barwertverordnung)
- Cover register Statutory Order (Deckungsregisterverordnung)
- Regulation on the determination of mortgage lending values (Beleihungswertermittlungsverordnung)
- Regulation on the determination of mortgage lending values of ships and ships under construction (Schiffsbeleihungswertermittlungsverordnung)
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## Pfandbrief Act

(Pfandbriefgesetz)

29. December 2023

## **Pfandbrief Act (PfandBG)**

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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 “Hypothekendarlehenbriefe” (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 (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) 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 qualify as a CRR credit institution within the meaning of Article 4 par. 1 no. 1 letter a of Regulation (EU) no. 575/2013 of the European Parliament and Council of June 26, 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) no. 648/2012 (Official Journal of the EU no. L 176 of June 27, 2013, p. 1; no. L 208 of August 2 2013, p. 68; no. L 321 of November 30, 2013, p.6; no. L 193 of July 21, 2015, p. 166; no. L 20 of January 25, 2017, p. 3; no. L 13 of January 17, 2020, p. 58), as last amended by Regulation (EU) 2020/873 (Official Journal of the EU no. L 204 of June 26, 2020, p. 4).
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 BaFin 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. 3 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 § 25c par. 1 sentence 2 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) <sup>1</sup>Except in the cases specified in § 35 par. 2 of the German Banking Act BaFin 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. the Pfandbrief bank has persistently violated provisions of this Act or the regulations or instructions issued for its implementation.

<sup>2</sup>Par. 1 sentence 4 shall apply *mutatis mutandis*.

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

(4) If BaFin completely revokes the licence pursuant to § 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 BaFin explicitly orders that the revoking of the licence be extended.

(5) <sup>1</sup>In the cases of par. 3 and par. 4 a cover pool administrator shall be appointed if this is necessary for the complete and punctual fulfillment of the Pfandbrief liabilities and a cover pool administrator has not already been appointed to § 30 par. 2 or 5. <sup>2</sup>The appointment may also take place at BaFin's request 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, with the exception of § 30 par. 2 sentence 6 in conjunction with § 30 par. 2a, shall apply mutatis mutandis to the procedure of appointing and the legal position of this cover pool administrator.

(6) <sup>1</sup>BaFin shall publish on its website a list of the institutions that have been granted a licence to conduct Pfandbrief business pursuant to § 1 par. 1 sentence 2. <sup>2</sup>This list shall also include information on the scope of the licence, the date on which the licence was granted, and an indication of which outstanding Pfandbrief types of the Pfandbrief bank may use which of the labels specified in § 41a. <sup>3</sup>Where the conditions of § 42 par. 1 are met, the date on which the license was granted shall be July 19, 2005. <sup>4</sup>BaFin shall update this list at least once every quarter.

### § 3 Supervision; requests for information and documentation

(1) <sup>1</sup>BaFin shall carry out the supervision of the Pfandbrief banks in accordance with the provisions of this Act and the laws and regulations named in § 6 par. 1 sentence 1 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 three years. <sup>5</sup>The supervision carried out by other government bodies shall remain unaffected.

(2) Any Pfandbrief bank, along with the members of its governing bodies and its employees, or any cover pool administrator shall, upon request, furnish to BaFin, or to any persons or entities acting on behalf of BaFin, information pertaining to its cover situation, including the economic recoverability of such cover, and to present supporting documentation.

### § 3a Cooperation with bodies in the European Economic Area

(1) <sup>1</sup>BaFin shall cooperate with the following bodies in accordance with Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU (Official Journal of the EU no. L 328 of December 18, 2019, p. 29):

1. the European Central Bank, to the extent that it is conferred with the general supervision of credit institutions that are Pfandbrief banks pursuant to Article 4 of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions

(Official Journal of the EU no. L 287 of October 29, 2013, p. 63; no. L 218 of August 19, 2015, p. 82);

2. the Single Resolution Board pursuant to Article 42 of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (Official Journal of the EU no. L 225 of July 30, 2014, p.1; no. L 101 of April 18, 2015, p. 62), as last amended by Regulation (EU) 2019/2033 (Official Journal of the EU no. L 314 of December 5, 2019, p. 1; no. L 20 of January 24, 2020, p. 26) when it adopts resolution measures in relation to credit institutions that are Pfandbrief banks;
3. the European Banking Authority and the European Securities and Markets Authority; and
4. the competent authorities of the other Member States of the European Union and of the other Contracting States to the Agreement on the European Economic Area designated pursuant to Article 18 par. 2 of Directive (EU) 2019/2162.

(2) <sup>1</sup>BaFin shall notify the European Banking Authority in accordance with Article 24 par. 9 of Directive 2019/2162 of the measures, decisions imposing pecuniary penalties and notifications relating to criminal cases published in accordance with § 40a and shall send the list published in accordance with § 2 par. 6 annually in accordance with Article 26 par. 3 of Directive 2019/2162. <sup>2</sup>BaFin shall notify the competent authorities of the other Member States of the European Union and of the other Contracting States to the Agreement on the European Economic Area designated pursuant to Article 18 par. 2 of Directive (EU) 2019/2162 of those circumstance which, based on informed consideration, could have a significant impact on the issuance of European Covered Bonds in the relevant Member State of the European Union or the relevant other Contracting State to the Agreement on the European Economic Area.

## SECTION 2

### GENERAL PROVISIONS CONCERNING PFANDBRIEF ISSUANCE

### § 4 Matching cover; ordering of increased minimum cover requirements

(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. <sup>2</sup>The net present value of the recorded cover assets must exceed by two percent the net present value of the liabilities to be covered (net present value of statutory overcollateralization). <sup>3</sup>The net present value of 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 Kingdom of Great Britain and Northern Ireland, 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 Article 114 par. 2 of Regulation (EU) no. 575/2013,

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,
- 2a. deposits, provided that the amount of the claims of the Pfandbrief bank is known at the time of purchase, 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, which are held with
  - a) the European Central Bank or
  - b) central banks of other Member States of the European Union or other Contracting States to the Agreement on the European Economic Area,
3. deposits, provided that the amount of the claims of the Pfandbrief bank is known at the time of purchase, 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, which are held with suitable credit institutions
  - a) domiciled in one of the states named in no. 1 for which, provided that the state is not a Member State of the European Union or other Contracting State to the Agreement on the European Economic Area, the equivalence of the supervisory framework within the meaning of Article 107 par. 4 of Regulation (EU) no. 575/2013 has been determined by the European Commission,
  - b) which have been assigned a risk weighting equivalent to credit quality step 1 or 2 according to Table 3 of Article 120 par. 1 of Regulation (EU) no. 575/2013,
  - c) which do not belong to the same group as the Pfandbrief bank within the meaning of § 10a par. 1 sentence 1 or par. 2 sentence 1 of the German Banking Act, and
  - d) which, if this Directive does not apply to them as stipulated in Article 1 par. 5 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (Official Journal of the EU no. L 176 of June 27, 2013, p. 338; no. L 208 of August 2, 2013, p. 73; no. L 20 of January 25, 2017, p. 1; no. L 203 of June 26, 2020, p. 95; L 436 of December 28, 2020, p. 77), as last amended by Directive (EU) 2022/2556 (Official Journal of the EU no. L 333 of October 27, 2022, p. 153), are subject to a supervisory framework comparable to the domestic one.

<sup>4</sup>Allocation to credit quality steps shall be based on the ratings awarded by recognised international rating agencies. <sup>5</sup>The limits set forth in § 19 par. 1 sentence 1 no. 2 letters a) and b), no. 3 letters a) to c), and no. 4, also in conjunction with § 20 par. 2 sentence 1 no. 2, with § 26 par. 1 sentence 1 nos. 3 to 5, or with § 26f par. 1 sentence 1 nos. 3 to 5, and of § 20 paragraph 2 sentence 1 no. 3 letters a) and b) 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 recorded cover assets, each of which must meet the requirements of Articles 10, 11, or 12 of Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions (Official Journal of the EU no. L 11 of January 17, 2015, p. 1) as amended by Delegated Regulation (EU) 2018/1620 (Official Journal of the EU no. L 271 of October 30, 2018, p. 10), and are valued for this purpose in accordance with Article 9 of Delegated Regulation (EU) 2015/61, as well as the cover assets in accordance with par. 1 sentence 3 no. 3 which have a residual maturity that does not exceed three months. <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 nominal value of the outstanding Pfandbriefe of each type must be covered at all times by the nominal value of the cover assets recorded for the respective type. <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. <sup>3</sup>For cover assets that can be settled at less than their nominal value, the lower redemption value shall be used in this respect. <sup>4</sup>In addition, the total amount of the nominal values of the cover assets recorded for a Pfandbrief type must exceed the total amount of the nominal values of the outstanding Pfandbriefe of this type by the following percentages (nominal value of statutory overcollateralisation):

1. a minimum of 2 percent for Mortgage Pfandbriefe and Public Pfandbriefe,
2. a minimum of 5 percent for Ship Pfandbriefe and Aircraft Pfandbriefe.

<sup>5</sup>Sentences 2 and 3 shall apply mutatis mutandis. <sup>6</sup>Cover assets used to meet the net present value of statutory overcollateralisation requirement in accordance with par. 1 sentence 1 may not be recognised for the purposes of meeting the nominal value of statutory overcollateralisation.

**(3)** 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 in the same manner as Pfandbrief liabilities.

**(3a)** <sup>1</sup>BaFin may, with respect to any cover pool, order that the Pfandbrief bank must meet cover requirements in excess of those stipulated in par. 1 sentences 1 and 2 and par. 2, respectively in conjunction with par. 3 sentence 1, insofar as the recoverability of liabilities arising from Pfandbriefe in circulation and derivative transactions used as cover seems not assured. <sup>2</sup>The Pfandbrief bank shall immediately publish any such order issued under sentence 1 on its website, specifying the amount of additional cover demanded, together with the information which must be published depending upon the class of Pfandbrief, as set forth in § 28. <sup>3</sup>Such order issued under sentence 1 shall be revoked insofar as the grounds therefore demonstrably no longer exist, but in any case no sooner than three months following their issuance.

**(3b)** <sup>1</sup>Par. 3a sentences 1 and 2 shall likewise apply in the case of any deficiencies determined in the course of annual financial statement audits or special examinations under § 44 par. 1 sentence 2 of the German Banking Act, including examinations of cover under § 3 par. 1 sentence 3 concerning the calculation of cover in accordance with par. 4, the maintenance of the cover register in accordance with § 5, the requirements for risk management in accordance with § 27,

the Pfandbrief reporting requirements under § 27a, compliance with the transparency provisions stipulated in § 28, the suitability of methods and processes used to determine the net present value of statutory overcollateralization in accordance with the Pfandbrief Net Present Value Regulation (Pfandbrief-Barwertverordnung), or the suitability of methods and procedures used to determine mortgage lending value. <sup>2</sup>Any such order issued under sentence 1 shall be revoked once the Pfandbrief bank has demonstrated, to the satisfaction of BaFin, that the deficiency which led to the order has been resolved, or as soon as it has been determined by way of audit that the deficiency which led to the order under sentence 1 no longer exists and that there are no new grounds for such order.

**(4)** <sup>1</sup>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. <sup>2</sup>The prescribed cover may not take into account cover assets for which neither a real estate lien, nor a ship mortgage, nor a registered lien, nor a foreign aircraft mortgage has been created, and nor a guarantee within the meaning of § 20 par. 1 no. 2 sentences 2 to 4 exists, and for which or whose debtor is deemed to have defaulted within the meaning of Article 178 par. 1 of Regulation (EU) no. 575/2013. <sup>3</sup>Sentence 2 shall apply mutatis mutandis to guaranteed cover assets whose guarantor is thereafter deemed to have defaulted.

**(5)** <sup>1</sup>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. <sup>2</sup>A Pfandbrief issued as an electronic security in accordance with § 2 par. 1 of the German Electronic Securities Act (Gesetz über elektronische Wertpapiere) shall be deemed to be in circulation as soon as the certificate required by § 8 par. 3 sentence 1 has been filed in accordance with § 8 par. 3 sentence 3.

**(6)** <sup>1</sup>The Federal Ministry of Finance is authorized to determine 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 sentences 1 and 2 and § 4b par. 2, 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 cover 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.

#### § 4a Collective action clauses in government bonds

Collective action clauses pursuant to § 4a of the German Federal Debt Administration Act (Bundesschuldenwesengesetz) in the issuing terms of bonds of the German Federal Government as well as corresponding collective action clauses in the issuing terms of bonds of other debtors within the meaning of § 20 par. 1 no. 1 do not preclude the inclusion in cover pursuant to § 4 par. 1 sentence 3 nos. 1 and 2, § 19 par. 1 sentence 1 no. 4, § 20 par. 1 no. 1, § 26 par. 1 sentence 1 no. 5.

#### § 4b Derivative transactions eligible as cover

**(1)** <sup>1</sup>Derivative transactions eligible as cover (derivative transactions) are derivatives separately grouped together under a standardised master contract for each Pfandbrief type in accordance with § 1 par. 11 sentence 6 no. 1 of the German Banking Act, including the collateral support annexes concluded under the master contract and further agreements. <sup>2</sup>In this context, all of the derivatives included must be structured as forward transactions and serve to hedge individual other cover assets or Pfandbrief liabilities or an aggregate of cover assets or Pfandbrief liabilities against general interest rate risk, a particular interest rate-related price risk, a currency risk, or a combination thereof. <sup>3</sup>Furthermore, it must be ensured for the master contract that the Pfandbrief bank's claims by stipulation of the master contract cannot be impaired in the event of the Pfandbrief bank's insolvency, or of the adoption of resolution measures within the meaning of § 2 par. 3 no. 5 of the German Recovery and Resolution Act (Sanierungs- und Abwicklungsgesetz) or Article 3 par. 1 no. 10 of Regulation no. 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) no. 1093/2010 (Official Journal of the EU no. L 225 of July 30, 2014, p. 1; no. L 101 of April 18, 2015, p. 62) as last amended by Regulation (EU) 2019/2033 (Official Journal of the EU no. L 314 of December 5, 2019, p. 1; no. L 20 of January 24, 2020, p. 26) against the Pfandbrief bank, or of insolvency proceedings relating to the assets of the Pfandbrief bank with limited business activity ("Pfandbriefbank mit beschränkter Geschäftstätigkeit") of other Pfandbrief types. <sup>4</sup>Derivative transactions and any legal opinions on their enforceability shall be appropriately documented, updated as necessary, and kept available. <sup>5</sup>The existence of hedging transactions pursuant to sentence 2 shall be documented in the same manner.

**(2)** <sup>1</sup>As a rule, a derivative serves to hedge within the meaning of par. 1 sentence 2 if the statutory requirements for the accounting treatment of a hedging relationship are met. <sup>2</sup>If redemptions or transfers of cover assets or redemptions of Pfandbrief liabilities, each of which is in the hedging relationship with a derivative, result in the hedging relationship of a derivative no longer existing to the extent required in accordance with sentence 1, the Pfandbrief bank shall restore the necessary extent of the hedging relationship while observing its obligations under the master contract.

**(3)** <sup>1</sup>The share of all liabilities of the Pfandbrief bank from derivative transactions of a Pfandbrief type of the total amount of outstanding Pfandbriefe of this type plus the liabilities arising from these derivative transactions, determined in each case according to the net present value,

may not exceed 12 percent. <sup>2</sup>Pfandbrief bank liabilities from derivative transactions that serve exclusively to hedge the currency risk of cover assets or Pfandbrief liabilities shall not be taken into account for this purpose.

**(4)** Derivative transactions may be concluded with

1. the German Federal Government,
2. a German Federal State,
3. a credit institution within the meaning of § 4 par. 1 sentence 3 no. 3, or
4. another suitable credit institution in accordance with a general regulation issued by BaFin pursuant to par. 5, provided that the Pfandbrief bank's claims under the derivative transaction are adequately collateralised by the contracting party.

**(5)** <sup>1</sup>BaFin may, at the request of at least one Pfandbrief bank and after consulting with the European Banking Authority, issue a general regulation to the effect that derivative transactions with suitable credit institutions domiciled in one of the countries specified in § 4 par. 1 sentence 3 no. 1 which have been assigned a risk weighting corresponding to credit quality step 3 in accordance with Table 3 of Article 120 par. 1 of Regulation (EU) no. 575/2013 and which meet the conditions of § 4 par. 1 sentence 3 no. 3 letters a) and c) may be used as cover if the restriction to quality step 1 or 2 would give rise to the risk of a significant concentration of debtors. <sup>2</sup>In the request pursuant to sentence 1, the Pfandbrief bank shall set out the circumstances from which the risk of a considerable concentration of debtors arises, in particular insofar as this is derived from the unwillingness of credit institutions which meet the conditions of § 4 par. 1 sentence 3 no. 3 to conclude derivative transactions. <sup>3</sup>The circumstances set out in the request must be current at the time the request is made. <sup>4</sup>The general regulation shall be published on the BaFin website and in the Federal Gazette (Bundesanzeiger).

**(6)** <sup>1</sup>The general regulation shall be revoked one year after its publication in the Federal Gazette unless, by the end of the tenth month after the publication of the general regulation in the Federal Gazette, at least one Pfandbrief bank has filed a request for an extension of the general regulation in accordance with the requirements pursuant to par. 5 sentence 2. <sup>2</sup>A request for extension may not be filed before the expiry of the seventh month after publication of the general regulation in the Federal Gazette. <sup>3</sup>Par. 5 sentence 4 shall apply *mutatis mutandis* to the revocation and extension of the general regulation. <sup>4</sup>At the time of publication of the revocation of the general regulation in the Federal Gazette, derivative transactions used as cover whose eligibility for cover is based on the general regulation shall remain eligible for cover after revocation of the general regulation until the derivatives included at that time have been settled in full, provided that the requirements of the revoked general regulation continue to be met.

## § 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 prescribed cover is repaid or if this asset becomes no longer suitable as cover, 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>BaFin 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 creditors 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.

**(1c)** <sup>1</sup>If the Pfandbrief business of a Pfandbrief bank is transferred in whole or in part to another Pfandbrief bank by way of universal succession, the cover registers kept by the transferring bank, including existing subsidiary registers, shall form separate subsidiary registers of the cover register of the respective Pfandbrief type of the Pfandbrief bank taking delivery with effect from the transfer. <sup>2</sup>The cover assets entered in these subsidiary registers shall be transferred to the principal register and corresponding subsidiary registers of the respective cover register of the Pfandbrief bank taking delivery within an appropriate period of time.

**(2)** <sup>1</sup>Within the first month of each half calendar year, the Pfandbrief bank shall submit to BaFin a record of all entries in the cover register in electronic form. <sup>2</sup>The cover pool monitor appointed in accordance with § 7 shall certify that at least the entries made in the last half calendar year correspond to the entries made in the cover register for that half calendar year. <sup>3</sup>The details shall be regulated by the statutory order in accordance with par. 3.

**(3)** <sup>1</sup>The Federal Ministry of Finance shall determine 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, including the procedure and documentation of the approval



of the cover pool monitor in accordance with par. 1 sentence 2 and § 8 par. 4 sentence 1. <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 BaFin. <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 BaFin.

## § 6 Contents of the Pfandbriefe

(1) <sup>1</sup>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. <sup>2</sup>The possibility to extend the maturity date in accordance with § 30 par. 2a and the relevant prerequisites for this are to be clearly indicated in the terms and conditions of issuance of Pfandbriefe.

(2) <sup>1</sup>Pfandbrief creditors may not be given a right to call for repayment. <sup>2</sup>A right to call for repayment granted contrary to sentence 1 shall be invalid.

(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 BaFin 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 BaFin 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 sentence 1 or 2, § 30 par. 2 or 5, § 36 par. 1 sentence 1, or has a preliminary appointment in accordance with § 36a par. 1 sentence 5 or par. 2, 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 notify BaFin of significant findings and observations made within the scope of their activities and shall provide BaFin with information on request. <sup>2</sup>The cover pool monitor shall not be bound by BaFin'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 their personal signature shall suffice. <sup>3</sup>In the case of a Pfandbrief that is to be issued as an electronic security in accordance with § 2 par. 1 of the German Electronic Securities Act (Gesetz über elektronische Wertpapiere), the certificate pursuant to sentence 1 shall be filed prior to the entry of the Pfandbrief in an electronic securities register with the same register-keeping office within the meaning of § 4 par. 10 of the German Electronic Securities Act at which the terms and conditions of issuance of the Pfandbrief are also filed; § 5 par. 1 of the German Electronic Securities Act shall apply mutatis mutandis.

(4) <sup>1</sup>Assets recorded in the cover register may be deleted from the cover register only with the agreement of the cover pool monitor. <sup>2</sup>The cover pool monitor's agreement must be in writing in the case of a cover register maintained in paper form; they may give their agreement by affixing their signature to the deleting entry in the cover register. <sup>3</sup>In the case of a cover register maintained electronically, the Pfandbrief bank may assume that the cover monitor has given their consent if it has been provided by means of a suitable authentication instrument and is documented with evidence. <sup>4</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>5</sup>Par. 2 sentence 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 BaFin, 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 BaFin.

## 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) <sup>1</sup>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, claims arising from declarations included in the same notarial deed with the creation of the real estate lien that establish an independent payment obligation, as well as any claims of the Pfandbrief bank arising from insurance coverage under § 15,

whether through direct right or assigned right, to the transfer of the property or rights equivalent to real property or comparable rights and to payment of the proceeds from realization. <sup>2</sup>Sentence 1 shall apply mutatis mutandis to claims pursuant to § 251 par. 3 sentence 1 and to § 253 par. 4 sentence 3 of the German Insolvency Code (Insolvenzordnung) and § 64 par. 3 sentence 1 and § 66 par. 5 sentence 3 of the German Business Stabilisation and Restructuring Act (Unternehmensstabilisierungs- und -restrukturierungsgesetz).

## § 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 Kingdom of Great Britain and Northern Ireland, in the United States of America, in Canada, in Japan, in Australia, in New Zealand or in Singapore; 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 at the latest 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

<sup>1</sup>Should building structures connected firmly with the property be taken into account as augmenting the value for the mortgage lending value, it must be ensured during the full lending term that, in case any such building is damaged or destroyed, the Pfandbrief bank receives insurance payment for compensation of loss, insofar as the building is not rebuilt or restored. <sup>2</sup>The insurance must at a minimum cover those risks which are significant according to the location and type of property. <sup>3</sup>The amount of the insurance must cover at least the following:

1. the expected costs to rebuild or restore the buildings referred to in sentence 1,
2. the amount of damages which would in all likelihood not be exceeded in the event that such significant risks to the buildings referred to in sentence 1 should occur, or
3. the amount of the loan claim outstanding, limited to the time value loss that the Pfandbrief bank would have received from a value-adequate building insurance policy in the event of a loss.

<sup>4</sup>If the insurance is taken out for a large number of properties or a large number of outstanding loan claims, it is permissible to agree on a limitation of the insurance benefit to the loss that will most probably not be exceeded in a period of one year (maximum annual indemnity). <sup>5</sup>In the case of individual building insurance, a maximum annual indemnity is permissible for individual types of risks with the exception of fire risk. <sup>6</sup>The Pfandbrief bank may only take out insurance for its own account if the borrower has an obligation to take out insurance in accordance with sentence 3 no. 1 or no. 2.

## § 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. <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 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 authorization by statutory order to BaFin. <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) <sup>1</sup>§ 12 par. 1 shall apply to land charges which serve as security for a loan claim on the basis of a security 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. <sup>2</sup>§ 5 par. 1a shall apply *mutatis mutandis* if a security agreement comprises a number of claims. <sup>3</sup>In a case of doubt, where more than one claim is to serve as cover, they shall rank equally. <sup>4</sup>Where foreign security interests serve as security for claims of different creditors, the rank of a claim serving as cover shall be established in accordance with the provisions of the applicable law in each case.

(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) <sup>1</sup>The cover prescribed in § 12 par. 1 may also be provided
1. in accordance with a general regulation issued on the basis of § 4b par. 5, up to a total of 8 percent of the total volume of Mortgage Pfandbriefe outstanding by way of claims on the amount to be paid uniformly to the Pfandbrief bank in the event of premature termination of the master contract of a derivative transaction existing with a contracting party in accordance with § 4b par. 4 no. 4 under the conditions specified therein;
  2. up to, in total, 10 percent of the total volume of the Mortgage Pfandbriefe outstanding
    - a) by money claims against credit institutions within the meaning of § 4 par. 1 sentence 3 no. 3 and which have been assigned to credit quality step 2, inasmuch as the amount of the claims of the Pfandbrief bank is known at the time of purchase and their fulfilment is not conditional, subordinated to other claims by way of a legal transaction or otherwise restricted,
    - b) by monies under an account relationship with the credit institutions mentioned in letter a),
    - c) by claims to the amount to be paid uniformly to the Pfandbrief bank in the event of premature termination of the master contract of a derivative transaction concluded with a credit institutions which meets the conditions of § 4 par. 1 sentence 3 no. 3 and to which risk weighting corresponding to credit quality step 2 has been assigned;
  3. up to, in total, 15 percent of the total volume of Mortgage Pfandbriefe outstanding
    - a) by cover assets of the type specified in § 4 par. 1 sentence 3 no. 1, inasmuch as they are not bonds,

- b) by money claims, inasmuch as the amount of the claims of the Pfandbriefbank is known at the time of purchase and their fulfilment is not conditional, subordinated to other claims by way of a legal transaction or otherwise restricted,
    - aa) against the European Central Bank,
    - bb) against central banks of Member States of the European Union or other Contracting States to the Agreement on the European Economic Area, or
    - cc) against credit institutions that meet the conditions of § 4 par. 1 sentence 3 no. 3 and are assigned a risk weighting corresponding to credit quality step 1,
  - c) by monies under an account relationship with the bodies mentioned in letter b),
  - d) by claims to the amount to be paid uniformly to the Pfandbrief bank in the event of premature termination of the master contract of a derivative transaction concluded with
    - aa) the German Federal Government,
    - bb) a German Federal State,
    - cc) a credit institution that meets the conditions of § 4 par. 1 sentence 3 no.3 and is assigned a risk weighting corresponding to credit quality step 1;
4. up to, in total, 20 percent of the total volume of Mortgage Pfandbriefe outstanding by assets of the type defined in § 20 par. 1 inasmuch as they are bonds.

<sup>2</sup>In the case of cover pursuant to sentence 1 no. 2, the cover assets specified in sentence 1 no. 1 shall be taken into account. <sup>3</sup>In the case of cover pursuant to sentence 1 no. 3, the cover assets specified in sentence 1 nos. 1 and 2 shall be taken into account. <sup>4</sup>In the case of cover pursuant to sentence 1 no. 4, the cover assets specified in sentence 1 nos. 1 to 3 shall be taken into account. <sup>5</sup>The share of money claims pursuant to sentence 1 nos. 1 to 3, also as monies under an account relationship and claims to the amount of a derivative transaction to be paid uniformly to the Pfandbrief bank in the event of premature termination of the master contract against a credit institution or credit institutions belonging to the same group within the meaning of § 10 par. 1 sentence 1 or par. 2 sentence 1 of the German Banking Act may not exceed 2 percent of the total Mortgage Pfandbriefe outstanding. <sup>6</sup>For money claims pursuant to sentence 1 no. 2 letter a), also in conjunction with sentence 1 no. 2 letter b), and pursuant to sentence 1 no. 3 letter b) double letter cc), also in conjunction with sentence 1 no. 3 letter c), arising from the payment settlement of cover assets, § 4 par. 1 sentence 3 no. 3 letter c) shall not apply. <sup>7</sup>§ 20 par. 3 shall apply *mutatis mutandis*.

**(2)** In the event of § 2 par. 3, BaFin may allow exceptions to the limits set down pursuant to par. 1 sentence 1 no. 3 letters a) and b) double letters aa) and bb), also in conjunction with letter c), and pursuant to par. 1 sentence 1 no. 3 letter d) double letters aa) and bb) and no. 4.

## SUBSECTION 2 PUBLIC PFANDBRIEFE

### § 20 Cover assets

**(1)** Only money claims resulting from the granting of loans, from bonds or from a comparable legal transaction or other money claims acknowledged in writing by the bodies covered by no. 1 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) 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, the United Kingdom of Great Britain and Northern Ireland and Canada and their central banks insofar as their risk weighting has been assigned to credit quality step 1 according to Table 1 of Article 114 par. 2 of Regulation (EU) no. 575/2013 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 5 of Article 121 par. 1 of Regulation (EU) no. 575/2013 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; allocation to credit quality step 1 shall be based on the ratings awarded by recognized international rating agencies; Article 115 par. 4 of Regulation (EU) no. 575/2013 shall apply *mutatis mutandis* in this respect,
  - f) the European Central Bank as well as multilateral development banks and international organizations within the meaning of Article 117 par. 2 and Article 118 of Regulation (EU) no. 575/2013,
  - g) public sector entities of another 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 par. 1 no. 8 of Regulation (EU) no. 575/2013 of the states named under letter d), insofar as they meet the requirements set forth in letter e), or
2. <sup>1</sup>in respect of which claims one of the bodies named in no. 1 letters a) to f), or an export credit agency domiciled in a state specified in no. 1 letters b) and d), insofar as the requirements of no. 1 letter g) or letter h) are fulfilled, has assumed the guarantee. <sup>2</sup>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. <sup>3</sup>Sentence 2 shall apply mutatis mutandis if the Pfandbrief bank has a claim against a domestic administration or one of the bodies named in no. 1 letters b to f to provide the guarantor with the funds to fulfil its guarantee obligation; Article 214 par. 1 of Regulation (EU) no. 575/2013 shall apply mutatis mutandis. <sup>4</sup>The guarantor and, in the case of sentence 3, the body obligated to provide the guarantor with funds, 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 their 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 or
  - b) by a public sector entity of one of the states named under no. 1 letter d or guaranteed by the institutions named in letter a 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.
- (2)** The cover prescribed in par. 1 may also be provided
  1. by the cover assets defined in § 19 par. 1 sentence 1 no. 1 under the conditions and restrictions mentioned therein 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;
  2. by the cover assets defined in § 19 par. 1 sentence 1 no. 2 under the conditions and restrictions mentioned therein 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. by up to 15 percent of the total volume of Public Pfandbriefe outstanding
    - a) by money claims against credit institutions which meet the conditions of § 4 par. 1 sentence 3 no. 3 and to which a risk weighting corresponding to credit quality step 1 has been assigned, provided that the amount of the claims of the Pfandbrief bank is known at the time of purchase, 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,
    - b) by monies under an account relationship with credit institutions which meet the conditions of § 4 par. 1 sentence 3 no. 3 and to which a risk weighting corresponding to credit quality step 1 has been assigned,
    - c) by claims to the amount to be paid uniformly to the Pfandbrief bank in the event of premature termination of the master contract of a derivative transaction concluded with
      - aa) the German Federal Government,
      - bb) a German Federal State, or
      - cc) a credit institution within the meaning of § 4 par. 1 sentence 3 no. 3 and to which a risk weighting corresponding to credit quality step 1 has been assigned;
  4. by monies under an account relationship with
    - a) the European Central Bank or

- b) the central bank of a Member State of the European Union or of another Contracting State to the Agreement on the European Economic Area.

<sup>2</sup>In the case of cover pursuant to sentence 1 no. 2, the cover assets specified in sentence 1 no. 1 shall be taken into account. <sup>3</sup>In the case of cover pursuant to sentence 1 no. 3, the cover assets specified in sentence 1 nos. 1 and 2 shall be taken into account. <sup>4</sup>§ 19 par. 1 sentence 5 shall apply 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. <sup>5</sup>§ 19 par. 1 sentence 6 shall apply mutatis mutandis.

**(3)** <sup>1</sup>The total volume of claims against debtors seated outside the Member States of the European Union for 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 under paragraphs 1 and 2 may not exceed 10 percent of the total volume of the claims for which such preferential right is ensured or for which there exists an obligation under sentence 3. <sup>2</sup>Sentence 1 shall likewise apply in the case of claims against guarantors and bodies obligated to provide the guarantor with funds under par. 1 no. 2. <sup>3</sup>Claims against debtors referred to in sentence 1 and guarantors referred to in sentence 2 shall not be counted towards the limit.

**(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 BaFin 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, BaFin 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 insofar as, 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)** <sup>1</sup>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 (*Gesetz über Rechte an eingetragenen Schiffen und Schiffsbauwerken*), as well 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. <sup>2</sup>§ 12 par. 3 sentence 2 shall apply *mutatis mutandis*.

### § 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. <sup>2</sup>Speculative elements must not be taken into consideration. <sup>3</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 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 BaFin.

## § 25 Start of repayment by instalments

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

## § 26 Further cover assets

- (1)** <sup>1</sup>The cover prescribed in § 21 sentence 1 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 the cover assets defined in § 19 par. 1 sentence 1 no. 1 under the conditions and restrictions mentioned therein subject to the condition that the total volume of the Mortgage Pfandbriefe outstanding shall be replaced by the total volume of the Ship Pfandbriefe outstanding;
  3. by the cover assets defined in § 19 par. 1 sentence 1 no. 2 under the conditions and restrictions mentioned therein subject to the condition that the total volume of the Mortgage Pfandbriefe outstanding shall be replaced by the total volume of the Ship Pfandbriefe outstanding;
  4. by the cover assets defined in § 19 par. 1 sentence 1 no. 3 under the conditions and restrictions mentioned therein subject to the condition that the total volume of the Mortgage Pfandbriefe outstanding shall be replaced by the total volume of the Ship Pfandbriefe outstanding;
  5. by the cover assets defined in § 19 par. 1 sentence 1 no. 4 under the conditions and restrictions mentioned therein subject to the condition that the total volume of the Mortgage Pfandbriefe outstanding shall be replaced by the total volume of the Ship Pfandbriefe outstanding.

<sup>2</sup>In the case of cover pursuant to sentence 1 no. 3, the cover assets specified in sentence 1 no. 2 shall be taken into account. <sup>3</sup>In the case of cover pursuant to sentence 1 no. 4, the cover assets specified in sentence 1 nos. 2 and 3 shall be taken into account. <sup>4</sup>In the case of cover pursuant to

sentence 1 no. 5, the cover assets specified in sentence 1 nos. 2 to 4 shall be taken into account <sup>5</sup>§ 19 par. 1 sentence 5 shall apply subject to the condition that the total volume of the Mortgage Pfandbriefe outstanding shall be replaced by the total volume of the Ship Pfandbriefe outstanding. <sup>6</sup>§ 19 par. 1 sentence 6 and § 20 par. 3 shall apply mutatis mutandis.

**(2)** In the event of § 2 par. 3, BaFin may allow exceptions to the limits set down in par. 1 nos. 4 and 5 in accordance with § 19 par. 2

## 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 26d. <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. <sup>3</sup>A critical concentration of risks is to be avoided from being included in cover. <sup>4</sup>As a rule, such a concentration shall be assumed if an unreasonably high proportion of the encumbered aircraft are operated by the same company or belong to a single aircraft type, thereby jeopardising the timely realisation of the cover assets.

### § 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>BaFin 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, BaFin 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 sentence 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. <sup>5</sup>Par. 2 sentence 6 shall apply *mutatis mutandis*.

(5) <sup>1</sup>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 aircraft, in particular claims which the registered lien in accordance with §§ 31 and 32 of the Law on Rights in Aircraft or the foreign aircraft mortgage would encompass, as well as claims from lease or charter, claims in respect of the transfer of the aircraft and claims to payment of the proceeds from realization. <sup>2</sup>§ 12 par. 3 sentence 2 shall apply *mutatis mutandis*.

### § 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 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 BaFin this period may be expanded for special reasons by up to five years for individual loan claims.

### § 26f Further cover assets

(1) <sup>1</sup>The cover prescribed in § 26a sentence 1 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; § 26a sentence 2 shall apply *mutatis mutandis*;



2. by the cover assets defined in § 19 par. 1 sentence 1 no. 1 under the conditions and restrictions mentioned therein subject to the condition that the total volume of the Mortgage Pfandbriefe outstanding shall be replaced by the total volume of the Aircraft Pfandbriefe outstanding;
3. by the cover assets defined in § 19 par. 1 sentence 1 no. 2 under the conditions and restrictions mentioned therein subject to the condition that the total volume of the Mortgage Pfandbriefe outstanding shall be replaced by the total volume of the Aircraft Pfandbriefe outstanding;
4. by the cover assets defined in § 19 par. 1 sentence 1 no. 3 under the conditions and restrictions mentioned therein subject to the condition that the total volume of the Mortgage Pfandbriefe outstanding shall be replaced by the total volume of the Aircraft Pfandbriefe outstanding;
5. by the cover assets defined in § 19 par. 1 sentence 1 no. 4 under the conditions and restrictions mentioned therein subject to the condition that the total volume of the Mortgage Pfandbriefe outstanding shall be replaced by the total volume of the Aircraft Pfandbriefe outstanding.

<sup>2</sup>In the case of cover pursuant to sentence 1 no. 3, the cover assets specified in sentence 1 no. 2 shall be taken into account. <sup>3</sup>In the case of cover pursuant to sentence 1 no. 4, the cover assets specified in sentence 1 nos. 2 and 3 shall be taken into account. <sup>4</sup>In the case of cover pursuant to sentence 1 no. 5, the cover assets specified in sentence 1 nos. 2 to 4 shall be taken into account. <sup>5</sup>§ 19 par. 1 sentence 5 shall apply subject to the condition that the total volume of the Mortgage Pfandbriefe outstanding shall be replaced by the total volume of the Aircraft Pfandbriefe outstanding. <sup>6</sup>§ 19 par. 1 sentence 6 and § 20 par. 3 shall apply mutatis mutandis.

**(2)** In the event of § 2 par. 3, BaFin may allow exceptions to the limits set down in par. 1 sentence 1 nos. 3 to 5 with the exception of claims to the amount to be paid uniformly to the Pfandbrief bank in the event of premature termination of the master contract of a derivative transaction.

## 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 documented in text form. <sup>4</sup>The Pfandbrief bank may enter in the cover register only those claims originated by third parties in respect of which it has subsequently satisfied itself of the creditworthiness of the claim debtor or, insofar as loan claims are concerned, of compliance with the requirements of banking law applicable to the lending business when originating these loan claims.

### § 27a Pfandbrief reporting; authority to issue regulations

**(1)** <sup>1</sup>The Pfandbrief bank shall submit to BaFin within one month of the end of each quarter, and with respect to the end of the quarter and to every class of Pfandbrief in circulation, reports on the organisation of the Pfandbrief business, on the Pfandbriefe in circulation and on their cover pools, in particular the recoverability thereof. <sup>2</sup>BaFin may shorten the reporting period for individual Pfandbrief banks or, by means of a general regulation, for individual Pfandbrief classes, to one month, insofar as this would seem appropriate to the cover situation or market conditions.

**(2)** <sup>1</sup>The Federal Ministry of Finance may, through the issuance of statutory order not requiring approval by the Bundesrat, further stipulate the content and scope of such Pfandbrief reporting, and the data carriers to be used, method of transmission, and data formats thereof. <sup>2</sup>The head organizations of the banking industry shall be heard before such statutory order is issued. <sup>3</sup>The Federal Ministry of Finance may, by statutory order, delegate this authority to BaFin.

### § 28 Transparency provisions

**(1)** <sup>1</sup>The Pfandbrief bank shall publish separately on its website the following information for its outstanding Mortgage Pfandbriefe, Public Pfandbriefe, Ship Pfandbriefe and Aircraft Pfandbriefe at the end of each quarter:

1. the total volume of the Pfandbriefe, including liabilities from derivative transactions within the meaning of § 4 par. 3, 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 determined in a stress test pursuant to § 4 of the Pfandbrief Net Present Value Regulation (Pfandbrief-Barwertverordnung),

2. a list of the International Securities Identification Numbers of the International Organization for Standardization of those Pfandbriefe bearing such International Securities Identification Numbers, broken down by Pfandbrief type,
3. in each case, the amount by which cover pools pursuant to no. 1 exceed the total amount of the Pfandbriefe pursuant to no. 1, as well as in each case the amounts of statutory, contractual, and voluntary excess cover,
4. the maturity structure of the outstanding Mortgage Pfandbriefe, Public Pfandbriefe, Ship Pfandbriefe and Aircraft Pfandbriefe, as well as the fixed-interest periods of the corresponding cover pools, in each case in the following bands:
  - a) up to six months,
  - b) more than six months up to 12 months,
  - c) more than 12 months up to 18 months,
  - d) more than 18 months up to two years,
  - e) more than two years up to three years,
  - f) more than three years up to four years,
  - g) more than four years up to five years,
  - h) more than five years up to ten years, and
  - i) more than ten years respectively,
5. the prerequisites for the extension of maturity pursuant to § 30 par. 2a, the powers of the cover pool administrator in this respect, and the effects of such an extension of maturity on the maturity structure of the Pfandbriefe pursuant to no. 4,
6. in each case, the largest non-zero negative sum resulting in the next 180 days within the meaning of § 4 par. 1a sentence 3 for the Pfandbriefe and an indication on which of the next 180 days this largest negative sum will result, as well as the total amount of the cover assets to the extent that it may at most be taken into account pursuant to § 4 par. 1a sentence 3,
7. the share of derivative transactions included in the cover pools in accordance with § 19 par. 1 sentence 1 no. 1, also in conjunction with § 20 par. 2 sentence 1 no. 1, with § 26 par. 1 sentence 1 no. 2, and with § 26f par. 1 sentence 1 no. 2, pursuant to § 19 par. 1 sentence 1 no. 2 letter c), also in conjunction with § 20 par. 2 sentence 1 no. 2, with § 26 par. 1 sentence 1 no. 3, and with § 26f par. 1 sentence 1 no. 3, in accordance with § 19 par. 1 sentence 1 no. 3 letter d), also in conjunction with § 26 par. 1 sentence 1 no. 4, and with § 26f par. 1 sentence 1 no. 4, and in accordance with § 20 par. 2 sentence 1 no. 3 letter c), 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,
8. in each case, the total amount of the claims entered in the cover register pursuant to § 19 par. 1 sentence 1 no. 2 letters a) and b), also in conjunction with § 20 par. 2 sentence 1 no. 2, with § 26 par. 1 sentence 1 no. 3, and with § 26f par. 1 sentence 1 no. 3, separated according to the countries in which the debtors or, in the case of a guarantee, the guaranteeing bodies, are domiciled, and for this purpose in each case additionally the total amount of the claims pursuant to Article 129 of Regulation (EU) no. 575/2013,
9. in each case, the total amount of the claims entered in the cover register pursuant to § 19 par. 1 sentence 1 no. 3 letters a) to c), also in conjunction with § 26 par. 1 sentence 1 no. 4 and with § 26f par. 1 sentence 1 no. 4, and pursuant to § 20 par. 2 sentence 1 no. 3 letters a) and b), and pursuant to § 20 par. 2 sentence 1 no. 4, separated according to the countries in which the debtors or, in the case of a guarantee, the guaranteeing bodies, are domiciled, and for this purpose in each case additionally the total amount of the claims pursuant to Article 129 of Regulation (EU) no. 575/2013,
10. in each case, the total amount of the claims entered in the cover register pursuant to § 19 par. 1 sentence 1 no. 4, also in conjunction with § 26 par. 1 sentence 1 no. 5 and with § 26f par. 1 sentence 1 no. 5, separated according to the countries in which the debtors or, in the case of a guarantee, the guaranteeing bodies, are domiciled,
11. for mortgages recorded in the cover register in accordance with § 12 par. 1, claims in accordance with § 20 par. 1, ship mortgages in accordance with § 21 and registered liens or foreign aircraft mortgages in accordance with § 26a and the assets pursuant to § 19 par. 1, § 20 par. 2, § 26 par. 1, and § 26f par. 1, in each case the total amount of the claims which exceed the limits laid down in § 13 par. 1 second half of sentence 2, also in conjunction with § 19 par. 1 sentence 7, in § 20 par. 3, in § 22 par. 5 sentence 2, also in conjunction with § 26 par. 1 sentence 6, or in § 26b par. 4 sentence 2, also in conjunction with § 26f par. 1 sentence 6,
12. with regard to nos. 8 to 10, in each case also the total amount of the claims which exceed the limits laid down in § 19 par. 1, § 20 par. 2, § 26 par. 1 and § 26f par. 1,
13. the percentage share of the fixed-rate cover assets in relation to the corresponding cover pool and the percentage share of the fixed-rate Pfandbriefe in relation to the liabilities to be covered,
14. for each foreign currency, the net present value pursuant to § 6 of the Pfandbrief Net Present Value Regulation (Pfandbrief-Barwertverordnung),
15. the share of those cover assets in the cover pool, including the claims taken into account pursuant to par. 2 sentence 1 no. 2, par. 3 no. 3, or par. 4 sentence 1 no. 2, for which or for whose debtor a default pursuant to Article 178 par. 1 of Regulation (EU) no. 575/2013 is deemed to have occurred with the proviso that a default pursuant to Article 178 par. 1 subparagraph 1 letter b) of Regulation (EU) no. 575/2013 is always deemed to have occurred after 90 days.

<sup>2</sup>For the first three-quarters of a financial year, the information shall be published within one month of the end of each quarter. <sup>3</sup>For the fourth quarter of a financial year, the information shall be published within two months of the end of the quarter. <sup>4</sup>The information shall be published for a period of two years. <sup>5</sup>The information shall also be included in the notes to the annual accounts.

(2) <sup>1</sup>The following additional information shall be given for the total volume of claims used to cover Mortgage Pfandbriefe in accordance with § 12 par. 1:

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 up to 1 million Euros, of more than 1 million Euros up to 10 million Euros and of more than 10 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 condominiums, single-family and two-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 as well as the total amount of these claims inasmuch as the respective amount in arrears is at least 5 percent of the claim, and their distribution by state in accordance with no. 1 letter b,
3. the average loan-to-value ratio, weighted using the amounts of the claims applied as cover; where a number of mortgages encumbering one property serve as cover, only the mortgage with the highest loan-to-value ratio shall be used; the loan-to-value ratio within the meaning of this law is the percentage proportion of the mortgage used as cover in accordance with § 14 plus the encumbrances of prior and equal rank in relation to the mortgage lending value,
4. the weighted average of the term elapsed since the loan was granted, based on the residual amount of the loan claim, as well as
5. 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. 4 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 in accordance with § 20 par. 1 used to cover Public Pfandbriefe:

1. the distribution with the amounts assigned as cover in their nominal values in tranches of up to 10 million Euros, of more than 10 million up to 100 million Euros, and of more than 100 million Euros, in each case with respect to a debtor or a guaranteeing entity;
2. distributed among the individual states in which the borrowers and, in the case of a 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 guaranteed by same in each case as well as according to whether or not the guarantee was granted for reasons of promoting exports.

3. the total amount of the payments on these claims that are at least 90 days in arrears as well as the total amount of said payments inasmuch as the amount in arrears is of five per cent or more of the individual claim, and their regional distribution in accordance with no. 2.

(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,
2. the total amount of the payments in arrears for at least 90 days in respect of these claims as well as the total amount of these claims inasmuch as the respective amount in arrears is at least 5 percent of the claim, and
3. 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. 3 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, the corresponding value of the previous year in each case shall also be stated.

## **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; extension of maturity

**(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 fulfillment of the Pfandbrief liabilities in accordance with their contractual terms 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 § 31 paragraphs 1 and 2. <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, a cover pool administrator shall be appointed; the relevant procedure shall be governed by § 31 paragraphs 1 and 2. <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 fulfilment of the Pfandbrief liabilities in accordance with their contractual terms. <sup>6</sup>In particular they may procure liquid funds in order to repay the outstanding Pfandbriefe on time or extend the maturity date of interest payments and principal repayments subject to the requirements of par. 2a and par. 2b. <sup>7</sup>They represent the Pfandbrief bank in and out of court in respect of this sphere of business. <sup>8</sup>Subject to the conditions stipulated in sentence 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>9</sup>The restrictions in accordance with § 19 par. 1, § 20 par. 2, § 26 par. 1, and § 26f par. 1 shall not apply.

**(2a)** <sup>1</sup>The cover pool administrator may extend the maturity dates of the principle payments subject to the requirements of par. 2b. <sup>2</sup>The cover pool administrator shall determine the period of extension in accordance with the requirements of par. 2b. <sup>3</sup>In total, the extension period may not exceed 12 months. <sup>4</sup>Furthermore, the cover pool administrator may extend the maturity dates of interest payments falling due within one month after the appointment of the cover pool administrator to the end of that monthly period. <sup>5</sup>The cover pool administrator may only exercise their authority uniformly for all Pfandbriefe of an issuance, but in full or pro rata. <sup>6</sup>If the cover pool administrator makes use of the option to extend the maturity of a Pfandbrief issuance, they must also extend the maturities of the payments of other Pfandbrief liabilities falling due within this extension period in at least the proportion in which the Pfandbrief issuance originally maturing earlier had not yet been fulfilled at that time. <sup>7</sup>Pfandbrief liabilities that would have matured but for the extension shall remain satisfiable even during the period of their extension, subject to the proviso that the liabilities of an issuance may only be repaid uniformly, but in full or pro rata, and at most in the same proportion in which the Pfandbrief issuances originally maturing earlier but not yet fully redeemed are satisfied at that time. <sup>8</sup>Unless otherwise agreed, deferred amounts shall bear interest for the duration of the extension in accordance with the terms and conditions applicable up to the extension. <sup>9</sup>Deferred interest payments shall be deemed to be principal amounts in this context. <sup>10</sup>Par. 6 sentences 1 and 2 shall remain unaffected.

**(2b)** <sup>1</sup>The cover pool administrator may only extend the maturity date if, at the time the maturity date is extended

1. the extension of the maturity is necessary in order to avoid the imminent insolvency of the Pfandbrief bank with limited business activity,
2. the Pfandbrief bank with limited business activity is not overindebted, and
3. there is reason to believe that the Pfandbrief bank with limited business activity will be able to meet its liabilities then due after the expiry of the maximum possible extension date, taking into account further possibilities for extension.

<sup>2</sup>For extensions that do not exceed the period of one month after the appointment of the cover pool administrator, the existence of these prerequisites shall be irrefutably presumed.

**(2c)** <sup>1</sup>The cover pool administrator shall publish any extension of the maturity date without delay, stating the Pfandbrief issuances affected and the respective scope of the extension, on the Pfandbrief bank's website in the information published in accordance with § 28 for the Pfandbrief type concerned, in at least one supra-regional stock-exchange gazette and in the Federal Gazette (Bundesanzeiger). <sup>2</sup>Sentence 1 shall apply mutatis mutandis to principal payments in accordance with par. 2a sentence 7.

**(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 net present value and nominal value of 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. <sup>3</sup>Opposition to the cover pool administrator's actions by the Pfandbrief bank's insolvency administrator is not permissible.

**(5)** <sup>1</sup>The competent court in accordance with § 31 par. 11 may appoint a cover pool administrator at BaFin's request 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>BaFin 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 imminent insolvency or an over-indebtedness of a cover pool, separate insolvency proceedings shall be held in respect of the assets of the Pfandbrief bank with limited business activity; the petition to open insolvency proceedings may only be submitted by BaFin. <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. <sup>5</sup>Before the Pfandbrief bank with limited business activity is completely resolved, the insolvency administrator in the insolvency proceedings relating to the assets of the Pfandbrief bank shall withhold appropriate amounts in an interim distribution as a provision for possible default claims in accordance with sentence 4; a final distribution shall not take place until it has been determined to what extent default claims within the meaning of sentence 4 may be asserted. <sup>6</sup>Furthermore, the provisions for creditors entitled to separate settlement, in particular § 52 sentence 1, § 190 par. 1 and par. 2 as well as § 192 of the German Insolvency Code (Insolvenzordnung) shall apply *mutatis mutandis*. <sup>7</sup>Assets within the meaning of paragraph 3 which belong to the insolvent estate of the Pfandbrief bank entitle separate settlement in insolvency proceedings in respect of the assets of the Pfandbrief bank with limited business activity in accordance with § 47 of the Insolvency Code. <sup>8</sup>Both the cover pool administrator and the insolvency administrator acting in the insolvency proceedings in respect of the assets of the Pfandbrief bank with limited business activity shall be entitled to register the claims mentioned in sentence 4 of the Pfandbrief creditors in the insolvency proceedings in respect of the Pfandbrief bank's assets. <sup>9</sup>This shall not affect the Pfandbrief creditors' right to reject or retract the registration.

**(6a)** <sup>1</sup>In the insolvency proceedings in respect of the assets of the Pfandbrief bank with limited business activity the insolvency court shall, at BaFin's request, order that the cover pool administrator himself or herself conduct the administration (self-administration) unless it is to

be expected under the given circumstances that such order will lead to disadvantages for the creditors. <sup>2</sup>If such an order as filed by BaFin contradicts the unanimous decision by a preliminary creditors' committee, inasmuch as such a body exists, the court shall decide according to its best judgment on the basis of the facts presented by BaFin, the cover pool administrator and the preliminary creditors' committee. <sup>3</sup>In the self-administration procedure, the cover pool administrator shall retain the right within the meaning of par. 2 (debtor in possession) to manage and represent the debtor Pfandbrief bank with limited business activity, insofar as the provisions of the German Insolvency Code do not restrict these powers. <sup>4</sup>This shall have no effect on the appointment of the advisory committee in accordance with § 31 par. 6a. <sup>5</sup>BaFin shall be heard prior to the appointment of the cover pool administrator within the meaning of § 270f par. 2 of the German Insolvency Code and of the preliminary cover pool administrator within the meaning of § 270b par. 1 sentence 1 of the German Insolvency Code. <sup>6</sup>In addition to the parties eligible to file an application pursuant to § 270e par. 1 nos. 4 to 5 and § 272 par. 1 nos. 3 to 5 of the German Insolvency Code, BaFin shall also be entitled to file for the revocation of the order in respect of self-administration or the preliminary self-administration. <sup>7</sup>§ 270c par. 5, §§ 270d, 270f par. 1 and §§ 276a, 278 par. 1 of the German Insolvency Code shall not apply.

**(7)** <sup>1</sup>Creditors of claims under derivative transactions in accordance with § 4 par. 3 and creditors of claims under legal transactions in accordance with par. 2 sentence 5 shall rank equally with Pfandbrief creditors. <sup>2</sup>The authority of a cover pool monitor pursuant to par. 2 sentence 6 in conjunction with par. 2a shall not apply to the payment obligations arising from the transactions referred to in sentence 1.

### § 31 Appointing the cover pool administrator; rights and duties

**(1)** <sup>1</sup>The competent court pursuant to par. 11 is responsible for appointing the cover pool administrator. <sup>2</sup>BaFin shall propose to the court at least one suitable natural person for the appointment. <sup>3</sup>The court may refuse to appoint a proposed person only if that person is unsuitable to assume the position; BaFin shall be heard before such refusal. <sup>4</sup>BaFin shall likewise be heard before a natural person other than the one proposed by BaFin is appointed.

**(2)** <sup>1</sup>The competent court may, at the suggestion of BaFin, appoint up to three cover pool administrators. <sup>2</sup>BaFin's proposal to appoint more than one cover pool administrator must include arrangements with regard to executive powers and powers of representation; par. 1 sentence 4 shall apply *mutatis mutandis*. <sup>3</sup>One cover pool monitor may be appointed simultaneously for more than one Pfandbrief bank with limited business activity. <sup>4</sup>The provisions of this Act which govern the cover pool administrator shall apply *mutatis mutandis* to more than one cover pool administrator.

**(2a)** <sup>1</sup>The cover pool administrator shall be supervised by the court competent for his/her appointment. <sup>2</sup>In particular, the court may at any time request from him/her certain information or a statement on the current situation and the management. <sup>3</sup>At BaFin's request it may remove the cover pool administrator if there is good reason to do so. <sup>4</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>5</sup>The provisions of § 15 of the German Commercial Code shall not be applicable.

**(2b)** <sup>1</sup>The cover pool administrator shall receive a certificate concerning their appointment, which they must return upon termination of their office. <sup>2</sup>The certificate shall state the legal grounds for the appointment. <sup>3</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>4</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>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 cover 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 cover 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. <sup>4</sup>In the case of registered rights over ships, the Land Register shall be replaced by the Shipping Register, in the case of registered rights over ships under construction the Shipbuilding Register, in the case of registered liens pursuant to § 1 of the Act of Rights on Aircraft (Gesetz über Rechte an Luftfahrzeugen) in the Register of Liens on Aircraft (Register für Pfandrechte an Luftfahrzeugen), and the Land Register office shall be replaced by the respective register court.

**(4) (repealed)**

**(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>BaFin may order a special audit. <sup>3</sup>The resulting costs incurred by BaFin shall be borne proportionally out of the assets recorded in the 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 be decisive in this respect.

**(6)** <sup>1</sup>The cover pool administrator shall fulfill his/her managerial functions with the due care of an orderly and conscientious manager. <sup>2</sup>In the event of a violation of duty, he shall be liable for damages to the Pfandbrief bank with limited business activity. <sup>3</sup>A violation of damages shall not be given if the cover pool administrator, in making an entrepreneurial decision, could reasonably assume that he/she was acting for the good of the Pfandbrief creditors on the basis of adequate information.

**(6a)** <sup>1</sup>The cover pool administrator may appoint an advisory committee with up to five expert members. <sup>2</sup>The advisory board shall advise the cover pool administrator. <sup>3</sup>The advisory board shall draw up its own rules of procedure. <sup>4</sup>The cover pool administrator may dismiss members of the advisory board and appoint new members. <sup>5</sup>§ 17 paragraphs 1 and § 18 of the Remuneration Ordinance under Insolvency Law (Insolvenzrechtliche Vergütungsverordnung) shall apply *mutatis mutandis* to the remuneration and the refund of expenses. <sup>6</sup>In all other respects, § 31a 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 their tasks. <sup>2</sup>At the request of the cover pool administrator, the Pfandbrief bank shall perform all acts and legal transactions necessary for the winding-up of the cover pools and refrain from acts and legal transactions which threaten to prevent the winding-up of the cover pools. <sup>3</sup>The cover pool administrator shall compensate the costs incurred in this respect to the insolvent estate.

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

**(10)** <sup>1</sup>BaFin may appoint a special representative in accordance with § 45c par. 1 sentence 1 of the German Banking Act and entrust him/her with the sole task of preparing the administration of the cover pool as cover pool administrator. <sup>2</sup>The special representative may not perform any executive or advisory functions. <sup>3</sup>For the rest, § 45c par. 1 sentences 3 to 5, pars. 6 and 7 of the German Banking Act shall apply *mutatis mutandis*. <sup>4</sup>The appointment as special representative shall be no reason for the competent court to reject the subsequent appointment to cover pool administrator unless the special representative has, contrary to sentences 1 and 2, performed executive or advisory functions.

**(11)** <sup>1</sup>Competence for all court decisions concerning the appointment and position of the cover pool administrator shall be determined by §§ 2 and 3 of the German Insolvency Code. <sup>2</sup>The decisions shall be passed by judicial order. <sup>3</sup>The procedure shall be governed by §§ 4, 5 paragraphs 1 and 3 and § 6 par. 1 sentence 2 and paragraphs 2 and 3 of the German Insolvency Code *mutatis mutandis*. <sup>4</sup>BaFin, the cover pool administrator and the Pfandbrief bank may lodge an immediate appeal against the court's decisions; half-sentence 1 does not apply in the cases listed under § 30 par. 6a.

### § 31a Remuneration of the cover pool administrator

**(1)** <sup>1</sup>The cover pool administrator shall be entitled to receive remuneration for their work and a refund of appropriate expenses. <sup>2</sup>The amount of remuneration shall take into account the costs and effort of the cover pool administrator, the success of the winding-up in terms of value, and the nominal value of the Pfandbriefe in circulation.

**(2)** <sup>1</sup>The court competent for the appointment shall, at the cover pool administrator's request, establish the remuneration and expenses. <sup>2</sup>The final and absolute judicial decision shall result in judicial enforcement pursuant to the Code of Civil Procedure (*Zivilprozessordnung*).

### § 32 Transfer of the cover pools and liabilities

**(1)** With the written approval of BaFin 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 BaFin 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. <sup>5</sup>This shall not affect § 30 par. 6 sentence 4.

(2) <sup>1</sup>In the event that a consideration is granted, § 30 par. 4 sentences 1 and 2 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 BaFin'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 cover 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 cover 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>Should the resolution authority, in effecting a transfer within the meaning of § 107 of the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz*), include provisions to transfer the bank's Pfandbrief business, whether in whole or in part, this transfer shall, in deviation from § 114 par. 2 of the Recovery and Resolution Act, be carried out in accordance with §§ 30 to 36. <sup>2</sup>The cover pool administrator shall, in the fulfilment of his obligations and exercise of his rights, observe such provisions ordered under sentence 1. <sup>3</sup>An order under sentence 1 may, in deviation from sentence 1, also order the direct transfer of the assets entered in the cover registers including the assets within the meaning of § 30 par. 3 and the relevant Pfandbrief liabilities. <sup>4</sup>In the case of sentence 3, § 30 par. 3 shall apply *mutatis mutandis* with the alteration that the transferee Pfandbrief bank takes the place of the cover pool administrator, and that the payment obligation vis-à-vis the transferring Pfandbrief bank exists irrespective of its insolvency; if the granting of a consideration is envisaged, § 30 par. 4 sentences 1 and 2 shall moreover apply *mutatis mutandis*. <sup>5</sup>If the following have been entered in the cover register:

1. claims against debtors which do not have their seat in a Member State of the European Union or another Contracting State to the Agreement on the European Economic Area, or
2. collateral for properties or rights equivalent to real property, ships or aircraft which, in turn, are located or registered outside the Member States of the European Union or the other Contracting State to the Agreement on the European Economic Area,

the transfer pursuant to sentence 3 may, however, only take place in such a way that the resolution authority at the same time preliminarily appoints ex officio a cover pool administrator who will administer the transferred assets in a fiduciary capacity in accordance with § 35 for the transferee Pfandbrief bank. <sup>6</sup>§ 31 shall apply *mutatis mutandis* to the procedure for the preliminary appointment and the legal position of the cover pool administrator within the meaning of sentence 5, subject to the proviso that BaFin shall take the place of the court, and to § 31a. <sup>7</sup>The appointment by court shall be made without delay. <sup>8</sup>§ 31 par. 1 and par. 2 shall apply *mutatis mutandis* to the appointment procedure.

(2) <sup>1</sup>When an order is issued under par. 2 sentence 1, the resolution authority can appoint ex officio the cover pool administrator on a temporary basis, unless a preliminary appointment in accordance with par. 1 sentence 5 is nevertheless necessary. <sup>2</sup>Par. 1 sentences 6 to 8 shall apply *mutatis mutandis* to this cover pool administrator.

(3) Paragraphs 1 and 2 shall apply accordingly in the case of application of a tool under Articles 24 through 26 of Regulation (EU) no. 806/2014

## SECTION 6 LEGAL REMEDIES AND INFRINGEMENTS

### § 37 Immediate enforceability

Protests and action in rescission against measures of BaFin, including the threat and determination of coercive measures in accordance with § 2 par. 2 no. 1, § 3 par. 1 sentence 2 and 3, § 3 par. 2, § 4 par. 3a and 3b, § 7 par. 3 sentence 2, § 27a par. 1 sentence 2, § 32 par. 1, § 35 par. 1 sentence 1, § 36a par. 1 sentence 5 and par. 2, as well as § 42 par. 1 sentence 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 they
1. issue a Pfandbrief contrary to § 4 par. 7 sentence 3,
  2. contrary to § 5 par. 1 sentence 1 or 3, in each case also in conjunction with a statutory order pursuant to § 5 par. 3 sentence 1 or 4, fail to record an entry correctly or completely and thereby prevent clear identification of the recorded assets,
  3. record an entry contrary to § 5 par. 1 first half of sentence 2,
  4. contrary to § 28 par. 1 sentence 1, fail to publish correctly or in full any information specified therein,
  5. contrary to § 28 par. 1 sentence 4, fail to publish information or fail to publish it for at least two years, or
  6. issue a financial instrument contrary to § 41a.

(2) Irregularities may be punishable by a fine of up to five 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 (BaFin).



## § 40a Publication of measures and notifications relating to criminal cases

(1) BaFin shall publish without delay on its website any final and binding measure imposed on a Pfandbrief bank subject to its supervision or on a manager of a Pfandbrief bank which it has taken on account of an infringement of this Act or the statutory orders issued in connection therewith, as well as any decisions regarding fines which are final and binding in accordance with the provisions of par. 2, including information on the nature and character of the infringement.

(2) <sup>1</sup>BaFin shall publish final and binding measures or final and binding decisions regarding fines on an anonymous basis if publication in accordance with par. 1

1. would violate the personal rights of natural persons or the disclosure of personal data would be disproportionate for other reasons,
2. would significantly jeopardise the stability of the financial markets of the Federal Republic of Germany, another Member State of the European Union, or of another Contracting State to the Agreement on the European Economic Area, or would impede the progress of a criminal investigation, or
3. would cause disproportionate damage to the Pfandbrief banks or natural persons involved.

<sup>2</sup>Notwithstanding sentence 1, BaFin may, in the cases referred to in sentence 1 nos. 2 and 3, refrain from publication in accordance with par. 1 until the reasons for publication on an anonymous basis have ceased to exist.

(3) <sup>1</sup>The measures and decisions regarding fines pursuant to par. 1 shall remain published on the BaFin website for at least five years from the date on which the measure becomes final and binding or the date on which the decision regarding the fine becomes final and binding. <sup>2</sup>Notwithstanding sentence 1, personal data shall be deleted without delay as soon as their publication is no longer necessary, and no later than three years after their publication.

(4) Pars. 1 to 3 shall apply mutatis mutandis to information received by BaFin pursuant to § 60 of the German Banking Act on a final decision within the meaning of § 4 of the Act on the Central Criminal Register (Bundeszentralregistergesetz), provided that the corresponding criminal proceedings involve criminal offences pursuant to § 54 par. 1 no. 2 in conjunction with § 32 par. 1 sentence 1 and § 1 par. 1 sentence 2 no. 1a of the German Banking Act or pursuant to § 38.

## SECTION 7 FINAL PROVISIONS

### § 41 Protection of the label “Pfandbrief”

In addition to credit institutions that have been granted licence to engage in Pfandbrief business, bonds may be issued under one of the labels listed in § 1 par. 1 sentence 2 or under another designation that contains the word “Pfandbrief” only by credit institutions within the meaning of Article 4 par. 1 no. 1 of Regulation (EU) no. 575/2013 domiciled in another Member State of the European Union or another Contracting State to the Agreement on the European Economic Area even without a licence from BaFin to engage in Pfandbrief business if

1. the issuance of bonds under one of the labels stated above is also permitted in the home state,
2. they are covered bonds within the meaning of Article 3 par. 1 of Directive (EU) 2019/2162,
3. the requirements of Article 129 of Regulation (EU) no. 575/2013 are met; and
4. in the designation of the bond in all prospectuses, reports and advertising material, any original foreign-language designation of the Pfandbrief is stated and reference is made to the fact that the bond is issued on the basis of the respective foreign law.

### § 41a Protection of the label “European Covered Bond”

(1) It is prohibited to market a financial instrument using the label “European Covered Bond” or its translation in the other official languages of the European Union in accordance with Article 27 par. 1 of Directive (EU) 2019/2162, unless the financial instrument is:

1. a Pfandbrief within the meaning of § 2 par. 3 issued by a Pfandbrief bank after July 7, 2022, or
2. a bond issued by a credit institution domiciled in another Member State of the European Union or Contracting State to the Agreement on the European Economic Area, for which it can be demonstrated that the competent authority designated for that state pursuant to Article 18 par. 2 of Directive (EU) 2019/2162 has published information on the entitlement to use that designation in the official language of that state in accordance with Article 26 par. 1 letter c) of Directive (EU) 2019/2162.

(2) It is prohibited to market a financial instrument using the label “European Covered Bond (Premium)” or its translation in the other official languages of the European Union in accordance with Article 27 par. 2 of Directive (EU) 2019/2162, unless the financial instrument is:

1. a Mortgage Pfandbrief, Public Pfandbrief, or Ship Pfandbrief issued by a Pfandbrief after July 7, 2022, or
2. a bond issued after July 7, 2022 by a credit institution domiciled in another Member State of the European Union or Contracting State to the Agreement on the European Economic Area, for which it can be demonstrated that the competent authority designated for that state pursuant to Article 18 par. 2 of Directive (EU) 2019/2162 has published information on the entitlement to use that designation in the official language of that state in accordance with Article 26 par. 1 letter c) of Directive (EU) 2019/2162.

## § 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 a 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>BaFin may revoke the licence which shall be deemed to have been granted if the report is not submitted on time.

(2) BaFin 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 (repealed)

## § 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 sentence 3 no. 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 (repealed)

## § 48 (repealed)

## § 49 Continuing eligibility as cover

(1) <sup>1</sup>Notwithstanding § 20 par. 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 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 Table 1 of Article 114 par. 2, Table 5 of Article 121 par. 1, Table 2 of Article 116 par. 1 or Table 3 of Article 120 par. 1 of Regulation (EU) no. 575/2013 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 no. 3 in the version valid as from March 26, 2009 shall be applied against the total volume.

(2) <sup>1</sup>Notwithstanding § 4 par. 1 sentence 3 no. 2a letter b), § 19 par. 1 sentence 1 no. 3 letter b) double letter bb), also in conjunction with § 19 par. 1 sentence 1 no. 3 letter c), with § 26 par. 1 sentence 1 no. 4, and with § 26f par. 1 sentence 1 no. 4, and § 20 par. 2 no. 4 letter b), claims against the United Kingdom of Great Britain and Northern Ireland or against debtors domiciled there or in respect of which these bodies assumed the guarantee and which were used as cover in accordance with the above-mentioned provisions before the point in time from which the United Kingdom of Great Britain and Northern Ireland ceases to be a Member State of the European Union and is no longer to be treated as such shall remain eligible as cover for the respective Pfandbrief type. <sup>2</sup>With regard to sight deposits and money claims payable on demand, this shall apply up to one month after the day on which the Pfandbrief bank was first able to dispose of the above-mentioned monies.

## (4) Claims

1. which are secured by real estate liens in respect of properties and rights equivalent to real property located in the United Kingdom of Great Britain and Northern Ireland,

2. which are secured by ship mortgages in respect of ships and ships under construction registered there, or
3. which are secured by aircraft mortgages in respect of aircraft registered there within the meaning of § 1 par. 2 sentence 1 no. 1 of the Law on Rights in Aircraft or which
4. claims against the United Kingdom of Great Britain and Northern Ireland or against debtors domiciled there or in respect of which these bodies have assumed the guarantee

and which, before the point in time from which the United Kingdom of Great Britain and Northern Ireland ceases to be a Member State of the European Union and is no longer to be treated as such, were used as cover in accordance with § 12 par. 1 in conjunction with § 13 par. 1 sentence 2, § 20 par. 1 no. 1 letters b), c) and g) and no. 2, § 21 in conjunction with § 22 par. 5 sentence 1 and § 26a in conjunction with § 26b par. 4 sentence 1 shall not be applied against the limits mentioned in § 13 par. 1 sentence 2 half-sentence 2, § 20 par. 3, § 22 par. 5 sentence 2 and § 26b par. 4 sentence 2.

#### **§ 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 execution 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 BaFin 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 Transitional provision regarding the CRD IV Implementation Act**

<sup>1</sup>§ 28 paragraphs 1 to 3 of this Act in the version valid as from January 1, 2014 shall be applied for the first time in respect of the quarter beginning on April 1, 2014, and in the case of the application of § 28 par. 5 shall be applied for the first time in respect of the quarter beginning on

April 1, 2015. <sup>2</sup>§ 28 paragraphs 1 to 3 in the version valid until December 31, 2013 shall be applied for the last time in respect of the quarter ending on March 31, 2014, and § 28 par. 5 in the version valid until December 31, 2013 shall be applied for the last time in respect of the quarter ending on March 31, 2015 with regard to § 28 par. 1 sentence 1 nos. 1 and 3, par. 2 sentence 1 no. 3 and sentence 2, par. 3 no. 1 and par. 4 in the version valid until December 31, 2013.

#### **§ 54 Transitional provision regarding the BRRD Implementation Act**

<sup>1</sup>§ 28 paragraphs 1 to 4 of this Act in the version valid as from December 19, 2014 shall be applied for the first time in respect of the quarter beginning on April 1, 2015, and in the case of the application of § 28 par. 5 shall be applied for the first time in respect of the quarter beginning on April 1, 2016. <sup>2</sup>§ 28 paragraphs 3 and 4 in the version valid until December 18, 2014 shall be applied for the last time in respect of the quarter ending on March 31, 2015, while § 28 par. 5 shall, with respect to § 28 par. 1 sentence 1 nos. 5 and 6, par. 2 sentence 1 no. 3, par. 3 no. 1 and no. 2 of the last half-sentence, and to par. 4 no. 2, be applied in the version valid until December 18, 2014 for the last time in respect of the quarter ending on March 31, 2016. <sup>3</sup>§ 27a par. 1 shall first be applied once a statutory order issued under § 27a par. 2 sentence 1 enters into force.

#### **§ 55 Transitional provision regarding the CBD Implementation Act**

§ 28 par. 5 shall apply for the first time to the quarter beginning on July 1, 2023 with respect to the disclosures pursuant to § 28 par. 1 sentence 1 nos. 2, 3, 5, 6, 8 to 10, and 12 in the version applicable of July 8, 2022.

## **Regulation on Pfandbrief reporting requirements**

(Pfandbrief-Meldeverordnung – PfandMeldeV)

of 4 October 2022

On the basis of § 4 par. 6, § 5 par. 3 and par. 2 sentence 3, § 16 par. 4, § 24 par. 5, § 26d par. 3 of the Pfandbrief Act (PfandBG), of which § 4 par. 6 was last amended by Article 1 no. 4 letter g, and § 5 par. 3 and par. 2 sentence 3 were last amended by Article 1 no. 7 letters c and d of the Act of 12 May 2021 (Federal Law Gazette I p. 1063), and § 16 par. 4, § 24 par. 5 and § 26d par. 3 were last amended by Article 352 of the Regulation of 31 August 2015 (Federal Law Gazette I p. 1474), in each case in conjunction with § 1 no. 4 of the Regulation on the Transfer of Powers to Issue Regulations to the Federal Financial Supervisory Authority (BAFinBefugV) and § 1 par. 2 of the Competence Reassignment Act (ZustAnpG) of 16 August 2002 (Federal Law Gazette I p. 3165) and the Organisational Decree of 8 December 2021 (Federal Law Gazette I p. 5176), of which § 1 no. 4 was last amended by Article 1 no. 1 of the Statutory Order of 10 May 2021 (Federal Law Gazette I p. 1095), in agreement with the Federal Ministry of Justice,

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of § 27a par. 2 of the Pfandbrief Act (PfandBG), which was added by Article 4 no. 10 of the Act of 10 December 2014 (Federal Law Gazette I p. 2091), in in conjunction with § 1 no. 4 of the Regulation on the Transfer of Powers to Issue Regulations to the Federal Financial Supervisory Authority, as last amended by Article 1 no. 1 of the Regulation of 10 May 2021 (Federal Law Gazette I p. 1095), as well as

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of § 22d par. 1 sentences 2 and 3 of the German Banking Act (Kreditwesengesetz – KWG), which was added by Article 4a, no.4 of the Act of 22 September 2005 (Federal Law Gazette I p. 2809), in conjunction with § 1 no. 5 of the Regulation on the Transfer of Powers to Issue Regulations to the Federal Financial Supervisory Authority, as last amended by Article 1 no. 2 of the Regulation of 25 January 2018 (Federal Law Gazette I p. 184) after consultation with the banking industry's umbrella associations,

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the Federal Financial Supervisory Authority orders:

## § 1 Scope of application

(1) This Regulation applies to Pfandbrief banks within the meaning of § 1 par. 1 sentence 1 of the Pfandbrief Act that have Pfandbriefe outstanding in at least one of the categories listed in § 1 par. 1 sentence 2 of the Pfandbrief Act.

(2) This Regulation shall not apply to Pfandbriefe outstanding and separated in accordance with § 51 sentence 1 of the Pfandbrief Act.

## § 2 Reporting period, reporting date, submission deadline

(1) <sup>1</sup>The reporting period for the reports in accordance with the Annexes shall be the calendar quarter. <sup>2</sup>Notwithstanding sentence 1, the reporting period in the case of a general regulation pursuant to § 27a par. 1 sentence 2 of the Pfandbrief Act shall be the calendar month for the Pfandbrief banks and Pfandbrief categories affected thereby.

(2) The reporting date shall be the final bank working day of the final month of the reporting period.

(3) <sup>1</sup>The submission deadline shall be in accordance with § 27a par. 1 sentence 1 of the Pfandbrief Act. <sup>2</sup>If the submission deadline falls on a Saturday, Sunday or public holiday at the head office of the Pfandbrief bank, the submission deadline shall fall on the following bank working day.

## § 3 Scope of reporting

(1) <sup>1</sup>Pfandbrief banks shall submit reports in accordance with Annex 2. <sup>2</sup>In addition, Pfandbrief banks that

1. conduct Pfandbrief business in the Mortgage Pfandbrief category shall submit reports in accordance with Annexes 3 to 8,
2. conduct Pfandbrief business in the Public Pfandbrief category shall submit reports in accordance with Annexes 9 to 14,
3. conduct Pfandbrief business in the Ship Pfandbrief category shall submit reports in accordance with Annexes 15 to 19,
4. conduct Pfandbrief business in the Aircraft Pfandbrief category shall submit reports in accordance with Annexes 20 to 24.

(2) <sup>1</sup>Pfandbrief banks that

1. have not entered into any derivative transactions as defined by § 4b of the Pfandbrief Act to be taken into account in the reports pursuant to Annexes 8, 14, 19 or 24; or
2. do not use as cover for the Mortgage Pfandbrief category any cover assets to be taken into account in the report pursuant to Annex 6 that are secured by mortgages on real property located abroad or on rights equivalent to real property located abroad; or
3. do not have cover assets to be taken into account in the report pursuant to Annex 12 for

the Public Pfandbrief category whose debtors or guarantors are domiciled abroad, or are the European Central Bank, a multilateral development bank pursuant to Article 117(2) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176 of 27.6.2013, p. 1; L 208 of 2.8.2013, p. 68; L 321 of 30.11.2013, p. 6; L 193 of 21.7.2015, p. 166; L 20 of 25.1.2017, p. 3), as last amended by Delegated Regulation (EU) 2022/439 (OJ L 90 of 18.3.2022, p. 1), or an international organisation pursuant to Article 118 of Regulation (EU) No 575/2013 are exempted from the obligation to submit the listed reports. <sup>2</sup>As soon as cover assets pursuant to sentence 1 are used for cover, this exemption shall expire.

## § 4 Currency format

(1) <sup>1</sup>The amounts in the Annexes shall be reported in euros. Relevant amounts not denominated in euros shall be converted into euros at the official exchange rate. <sup>2</sup>If the reporting date falls on a Saturday, Sunday or public holiday at the head office of the European Central Bank, the official exchange rate of the preceding banking day shall be used.

## § 5 Submission method

(1) <sup>1</sup>Reports shall be electronically submitted. <sup>2</sup>The German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) shall publish more detailed provisions on the method of electronic submission and the data formats to be used on its website.

## § 6 Insolvency and resolution of the Pfandbrief bank

(1) If insolvency proceedings are opened in respect of the assets of the Pfandbrief bank, the obligation to submit the report in accordance with Annex 2 shall cease as of the following reporting date.

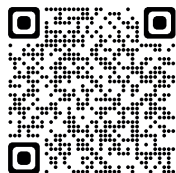
(2) In the case of par. 1, in the event of the appointment of a cover pool administrator pursuant to § 30 par. 5 sentence 1 of the Pfandbrief Act as well as in the event of the adoption of a resolution tool within the meaning of Article 3 par.1 no. 9 of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225 of 30 July 2014, p. 1; L 101 of 18 April 2015, p. 62), as last amended by Regulation (EU) 2021/23 (OJ L 22 of 22 January 2021, p. 1), or within the meaning of § 2 par. 3 no. 4 of the Recovery and Resolution Act, against the Pfandbrief bank, the supervisory authority shall be authorised to require the Pfandbrief bank to submit additional reports appropriate in terms of content, scope and frequency, or to exempt it from the obligation to submit individual reports.

## § 7 Transitional provisions

<sup>1</sup>The reporting date for the first report shall be 30 June 2023. Prior to the reporting date of 30 June 2027, cover assets need only be taken into account with the information available to the Pfandbrief bank in the system. <sup>2</sup>If the Pfandbrief bank makes use of sentence 2 for cover assets, the fields of the reports concerning data of such cover assets shall be marked in the manner provided therefor.

- Annex 1 Overview and instructions for completing reports
- Annex 2 Report: Cross-category (GttÜbg)
- Annex 3 Report: Mortgage Pfandbriefe – outstanding (HypUml)
- Annex 4 Report: Mortgage Pfandbriefe – cover (HypDck)
- Annex 5 Report: Mortgage Pfandbriefe – cover – ordinary cover assets – located in Germany (HypDckOrdInl)
- Annex 6 Report: Mortgage Pfandbriefe – cover – ordinary cover assets – located outside of Germany (HypDckOrdAus)
- Annex 7 Report: Mortgage Pfandbriefe – cover – other cover assets (HypDckWtr)
- Annex 8 Report: Mortgage Pfandbriefe – cover – other cover assets – derivative transactions (HypDckWtrDrv)
- Annex 9 Report: Public Pfandbriefe – outstanding (ÖpfUml)
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- Annex 24 Report: Aircraft Pfandbriefe – cover – other cover assets – derivative transactions (FlgDckWtrDrv)

The 24 Annexes are published in the Federal Law Gazette in text format only. The vdp also provides them in Excel format (German only) as a non-binding working aid:  
<https://atvdp.de/8d>



## 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, as last amended by Art. 2 of the Pfandbrief Law Amendment Regulation (Pfandbriefrechtliche Änderungsverordnung) of 4 October 2022 (Federal Law Gazette I p. 1614)

On the basis of § 4 par. 6 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 Transfer of Powers to Issue Regulations to the Federal Financial Supervisory Authority (BAFinBefugV) of 13 December 2002 (Federal Law Gazette 2003 I p. 3), as last amended by Article 11 of the Act of 22 May 2005 (Federal Law Gazette I p. 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

<sup>1</sup>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.

<sup>2</sup>When converting currencies for which no Euro reference rate is published, the current mean values calculated from determinable buying and selling rates shall be used as a basis.

### § 2 Calculation of net present value

<sup>1</sup>The net present values of the Mortgage Pfandbriefe, 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. <sup>2</sup>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. <sup>3</sup>If the result is a negative amount, it must immediately be redressed in terms of the net present value in the form of additional cover assets.

### § 3 Calculating the current net present values

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

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

### § 4 Stress test

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

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

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

1. The number of basis points for the static approach is 250.
2. <sup>1</sup>For the dynamic approach, a number and distribution of maturities appropriate to the scope and structure of the Pfandbrief bank's transaction shall be selected on the respective interest rate curve, whereby they must be at least seven in number and comprise the maturities 1 month, 1 year, 2 years, 5 years, 7 years, 10 years and 15 years. <sup>2</sup>The standard deviation of the daily differences between the logarithmised interest rates is to be determined, for the interest rate of each maturity selected, on the basis of the historical observation period of the previous 250 bank working days. <sup>3</sup>The standard

deviation of the respective maturity is then, on the basis of a one-sided confidence level of 99 percent and a holding period of the portfolio of 6 months, to be multiplied by a factor of 2.33 and the square root of 125. <sup>4</sup>The resulting values are subsequently to be multiplied by the current interest rate expressed in basis points of the respective maturity. <sup>5</sup>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. <sup>6</sup>The new interest rates obtained by this method shall be interpolated to construct the new interest rate curves. <sup>7</sup>Notwithstanding sentence 2, as long as an interest rate of zero or a negative interest rate exists for at least one of the applied points of an interest rate curve on at least one of the previous 250 bank working days, the standard deviation of the daily differences expressed in basis points shall be determined on the basis of the historical observation period of the 250 previous bank working days for the interest rates of all points of this interest rate curve. <sup>8</sup>Sentence 4 shall then not apply.

(2) 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, the United Kingdom of Great Britain and Northern Ireland, Canada and Japan,
  - d. at least 25 percent in the case of currencies of other states.

2. <sup>1</sup>For the dynamic approach the standard deviation of the daily differences between the logarithmised exchange rates shall be determined on the basis of the historical observation period of the previous 250 bank working days. <sup>2</sup>The standard deviation of the respective exchange rate is then, on the basis of a one-sided confidence level of 99 percent and a holding period of the portfolio of 6 months, to be multiplied by a factor of 2.33 and the square root of 125. <sup>3</sup>The resulting value is to be multiplied by the current exchange rate of the respective foreign currency. <sup>4</sup>The result is equivalent to the markdown or markup to be applied to the current exchange rate.

## § 7 Duties of documentation

- (1) 1. the procedure for evaluating derivatives in accordance with § 3 par. 1 sentence 2 as well as later changes to this procedure,  
2. the procedure for determining the standard deviation as well as the interpolation procedure in accordance with § 5 par. 1 no. 2, and  
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

<sup>1</sup>Once it has been selected, the Pfandbrief bank may change the calculation procedure only with the Federal Authority's consent. <sup>2</sup>A change shall be deemed to be not only the selection of another specified calculation procedure but also a change of parameters and procedures within the calculation procedure applied in each case. <sup>3</sup>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 (Federal Law Gazette I p. 2815) or of the Mortgage Pfandbrief Net Present Value Regulation of 19 December 2003 (Federal Law Gazette I p. 2818).
- (2) Until 30 November 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 par. 2 sentence 1 of the Pfandbrief Act aimed at safeguarding at all times the cover for these Pfandbriefe.

## § 10 Entry into force, abrogation

<sup>1</sup>This Regulation shall enter into force on the day after promulgation. <sup>2</sup>At the same time, the following regulations shall be abrogated:

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

## 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 25 August 2006, as last amended by Art. 3 and 4 of the Pfandbrief Law Amendment Regulation (Pfandbriefrechtliche Änderungsverordnung) of 4 October 2022 (Federal Law Gazette I p. 1614)

On the basis of § 5 par. 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 Transfer of Powers to Issue Regulations to the Federal Financial Supervisory Authority (BAFinBefugV) of 13 December 2002 (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 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 of the Pfandbrief Act, the procedure and documentation of the cover pool monitor's approval pursuant to § 5 par. 1 sentence 2 and § 8 par. 4 sentence 1 of the Pfandbrief Act, the form of the records and confirmations pursuant to § 5 par. 2 of the 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 (BaFin).
- (2) Deletion notes shall also be deemed to be entries within the meaning of this statutory order.



## § 2 Form of the cover registers; entries

(1) The cover register for a Pfandbrief category may, as provided for in Part 3, be kept in paper form or, at the Pfandbrief bank's permanent choice, as an electronic register.

(2) <sup>1</sup>Entries may be made only by persons specifically authorised by the Pfandbrief bank; the authorisation and any changes must be documented. <sup>2</sup>The documentation shall be held in safekeeping for each person for at least five years after the authorisation 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) <sup>1</sup>A separate cover register shall be kept for each Pfandbrief category as defined by § 1 par. 1 sentence 2 nos. 1 to 3 of the Pfandbrief Act. <sup>2</sup>If the Pfandbrief bank makes use of the possibility provided for in § 51 of the 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. <sup>3</sup>Each cover register must bear the name of the Pfandbrief bank and the heading "Cover register" ("Deckungsregister") together with the Pfandbrief category. <sup>4</sup>If a cover register maintained in paper form is kept in a non-bound form, each page of the cover register shall contain the information specified in sentence 3 and shall be numbered consecutively. <sup>5</sup>In the case of sentence 4, the cover pool monitor shall personally mark each page with at least their initials.

(2) <sup>1</sup>Besides the respective principal register, a subsidiary register shall be kept in accordance with § 13 for derivative transactions as defined by § 4b of the Pfandbrief Act. <sup>2</sup>Further subsidiary registers may be kept for cover assets as defined by § 4 par. 1 sentence 3, by § 18 par. 1 second case (foreign security interests), by § 19 par. 1 sentence 1 no. 2 letters a and b, also in conjunction with § 20 par. 2 sentence 1 no. 2, § 26 par. 1 sentence 1 no. 3, and with § 26f par. 1 sentence 1 no. 3, by § 19 par. 1 sentence 1 no. 3 letters a to c, also in conjunction with § 26 par. 1 sentence 1 no. 4 and with § 26f par. 1 sentence 1 no. 4, by § 19 par. 1 sentence 1 no. 4, also in conjunction with § 26 par. 1 sentence 1 no. 5 and with § 26f par. 1 sentence 1 no. 5, by § 20 par. 2 sentence 1 no. 3 letters a and b, and no. 4 of the Pfandbrief Act. <sup>3</sup>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. <sup>4</sup>Par. 1 sentences 4 and 5 shall apply mutatis mutandis. <sup>5</sup>The principal register must state which subsidiary registers are being kept as parts of the cover register.

(3) <sup>1</sup>Where subsidiary registers are created pursuant to § 5 par. 1 sentence 4 of the Pfandbrief Act, an entry shall be made in the cover register referring to the subsidiary register. <sup>2</sup>Such reference must describe the type of cover assets entered in the subsidiary register.

<sup>3</sup>The cover assets entered in the subsidiary register shall be numbered consecutively within the subsidiary register. <sup>4</sup>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. <sup>5</sup>Par. 1 sentences 4 and 5 shall apply mutatis mutandis.

(4) <sup>1</sup>If entries are transferred from the subsidiary register to the principal register, then

1. they shall be recorded there with the consecutive number of the principal register and the date of the transfer,
2. the additional information required in accordance with §§ 9 to 14 shall be transferred from the subsidiary register to the principal register; and
3. it shall be noted in the column to be provided for remarks pursuant to § 8 par. 3 that it is a transfer from the designated subsidiary register; in this regard, consecutive numbers and dates of all entries of the subsidiary register shall be indicated, on the basis of which the existence of the registered cover asset can be traced at the time of the transfer to the principal register.

<sup>2</sup>On completion of the transfer of the entries of the subsidiary register, the reference to this subsidiary register shall be deleted from the principal register. <sup>3</sup>The subsidiary register on the status of the transfer to the principal register shall then be kept on file as an annex to the cover register and shall be retained for at least ten years.

## § 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) <sup>1</sup>Entries are to be made in a permanent manner in such a way that any changes that are made subsequently may be recognised as such at any time. <sup>2</sup>It shall be ensured by technical and organisational measures that the original content remains ascertainable. <sup>3</sup>With the exception of the information contained in column 1 and with the exception of deletion notes, sentences 1 and 2 shall not apply to the entries of cover assets for which at least ten years have elapsed since the proper complete deletion.

## PART 2

### ADDITIONAL REQUIREMENTS CONCERNING REGISTERS KEPT IN ELECTRONIC FORM

## § 6 General requirements

(1) <sup>1</sup>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. <sup>2</sup>§ 5 par. 2 sentence 3 shall apply mutatis mutandis.

(2) <sup>1</sup>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. <sup>2</sup>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) <sup>1</sup>The data processing systems employed must comply with the level of technology as well as with the requirements of data protection and data security. <sup>2</sup>In particular, they must ensure that

1. their functions can only be used when the user proves their identity towards the system in a secure manner (identification and authentication),
2. the delegated rights of use are administered in the system (administration of authorisations),
3. the delegated rights of use are checked by the system (authorisation 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),
7. occurring malfunctions are reported immediately (dependability) and
8. the exchange of data from or for the cover register in the system and when using public data networks can take place securely (transmission security).

(2) <sup>1</sup>The Pfandbrief bank shall hold in safekeeping at least one complete backup copy of each electronic cover register. <sup>2</sup>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. <sup>3</sup>The original and at least one backup copy of the cover register shall be stored on data carriers located within the jurisdiction of the Pfandbrief Act. <sup>4</sup>In the event of technical outsourcing, it shall also be ensured that the outsourcing company is obliged, in the event of the Pfandbrief bank's insolvency, to transmit the records to the cover pool administrator in a form that can be processed electronically using standardised database applications.

## PART 3

### CONTENT OF THE ENTRIES

#### § 8 General requirements

(1) <sup>1</sup>It must be ensured that cover assets are not entered until all requirements concerning the inclusion of the assets in cover have been met. <sup>2</sup>Backdated entries shall be inadmissible.

(2) <sup>1</sup>Each cover asset shall be entered with a consecutive number within the cover register. <sup>2</sup>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. <sup>1</sup>The columns 1 to 4 are to be given the heading "Description of the cover asset" ("Bezeichnung des Deckungswerts"). <sup>2</sup>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. <sup>1</sup>The encumbered property or right equivalent to real property is to be entered in column 2a. <sup>2</sup>Either the description from the inventory of the land register (local sub-district, field, cadastral parcel) may be entered or reference may be made to the land register folio. <sup>3</sup>In the latter case, the local court, the land register district and the number of the land register sheet as well as the postal address of the property or another customary local designation of the location of the property must also be stated. <sup>4</sup>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. <sup>1</sup>Except in the case of a mortgage (Hypothek), the secured personal claim is also to be entered in column 4. <sup>2</sup>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. <sup>1</sup>Deletion notes are to be entered in column 5. <sup>2</sup>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. <sup>3</sup>Inasmuch as the deletion is noted at a separate place in the register, in addition to the deletion note in column 5, the details concerning the cover asset to be deleted in column 1 are also to be repeated. <sup>4</sup>The signature of the cover pool monitor pursuant to § 8 par. 4 sentence 2 half-sentence 2 of the Pfandbrief Act must be unequivocally allocated to the respective deletion note of the Pfandbrief bank. <sup>5</sup>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. <sup>6</sup>In the case of a cover register that is kept electronically, the consent to the deletion may also be provided by means of a suitable authentication instrument pursuant to § 8 par. 4 sentence 3 of the Pfandbrief Act. <sup>7</sup>A suitable authentication instrument is a procedure that meets the requirements for strong customer authentication within the meaning of Article 4 point (30) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35; L 169, 28.6.2016, p. 18; L 102, 23.4.2018, p. 97; L 126, 23.5.2018, p. 10), whereby the release of the electronic declaration by the cover pool monitor always requires at least

one authentication element. <sup>8</sup>Electronic consent to cancellation shall be documented in an evidential manner.

6. <sup>1</sup>Where the cover asset is entered in favour of the Pfandbrief bank in a funding register pursuant to § 22a or § 22b of the German Banking Act (Kreditwesengesetz - KWG), this must be noted in column 6. <sup>2</sup>The enterprise keeping the register as well as the time (date and hour) of the entry in the funding register, as well as the party obliged to transfer in the case of § 22b of the German Banking Act, shall be stated.
7. Where registered assets pursuant to § 5 par. 1a sentence 1 of the 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 of the 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) <sup>1</sup>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. <sup>2</sup>The columns 2a and 3 of form DR 1 are to be modified accordingly. <sup>3</sup>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. <sup>4</sup>The supplementary sheets shall be provided with the information referred to in § 4 par. 1 sentence 3 and marked as supplementary sheets, and shall also be marked using the consecutive number from column 1 letter a.

(3) Insofar as properties located outside of Germany 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 of the Pfandbrief Act are to be made as follows in keeping with form DR 2 in Annex 2:

1. <sup>1</sup>The columns 1 to 3 are to bear the heading “Description of the cover asset” (“Bezeichnung des Deckungswerts”). <sup>2</sup>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 guarantee has been assumed, the body that issued the guarantee.
4. <sup>1</sup>Deletion notes are to be entered in column 4 stating the date. <sup>2</sup>Inasmuch as the deletion is noted at a separate place in the register, in addition to the deletion note in column 4, the details concerning the asset to be deleted in column 1 are also to be repeated. § 9 no. 5 sentences 4 to 8 shall apply mutatis mutandis.
5. Claims for indemnification pursuant to § 20 par. 3 sentence 3 of the Pfandbrief Act shall be entered in column 5 for the claim concerned, indicating the party obliged to indemnify (name and address).

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

(1) Entries of cover assets pursuant to § 21 and § 26 par. 1 sentence 1 no. 1 of the Pfandbrief Act are to be made, subject to par. 2, in accordance with §§ 9 and 10.

(2) <sup>2</sup>In the heading, the term “Ship mortgages” (“Schiffshypotheken”) shall replace the term “Mortgages” (“Hypotheken”). <sup>2</sup>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 encumbrance as well as by the name of the register and of the registration office. <sup>3</sup>In the case of rights in rem pursuant to § 22 par. 5 of the 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. <sup>4</sup>§ 9 no. 4 sentence 2 shall apply mutatis mutandis. <sup>5</sup>In the case of § 23 par. 4 of the Pfandbrief Act, the security relationship relating to claims arising from the ship insurance shall be entered in column 6.

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

(1) The entry of cover assets pursuant to §§ 26a and 26f par. 1 sentence no. 1 of the Pfandbrief Act is to be made, subject to par. 2, in accordance with §§ 9 and 10.

(2) <sup>1</sup>In the heading, the term “Aircraft mortgages” (“Flugzeughypotheken”) shall replace the term “Mortgages” (“Hypotheken”). <sup>2</sup>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. <sup>3</sup>In the case of rights in rem pursuant to § 26b par. 5 of the 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. <sup>4</sup>§ 9 no. 4 sentence 2 shall apply mutatis mutandis. In the case of § 26c par. 4 of the Pfandbrief Act, the security relationship relating to claims arising from the aircraft insurance shall be entered in column 6.

### § 13 Entry of derivative transactions

The entry of 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:

- <sup>1</sup>The columns 1 to 8 are to be given the heading “Description of the cover asset” (“Bezeichnung des Deckungswerts”). <sup>2</sup>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 bank-internal registration number at the Pfandbrief bank.
- In column 3, the name and address of the counterparty are to be entered.
- Column 4 contains the description of the product and product-specific details such as the amounts and currencies of the exchange of capital, the agreed interest rates or reference interest rates together with premiums or discounts and any further details necessary for the unequivocal identification of the contract.
- In column 5, the internal registration number at the Pfandbrief bank’s counterparty is to be entered.
- Column 6 contains under letter a the closing date of the master contract governing the derivative transaction, under letter b the trade date of the individual transaction, under letter c the original lifetime of the individual transaction and under letter d the maturity date of the individual transaction.
- 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.
- <sup>1</sup>In column 8, the cover pool monitor can, in the case of a cover register kept in paper form, give their approval as is required pursuant to § 5 par. 1 sentence 2 of the Pfandbrief Act by affixing their signature. <sup>2</sup>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. <sup>3</sup>§ 8 par. 4 sentences 3 of the Pfandbrief Act and § 9 no. 5 sentences 6 to 8 shall apply mutatis mutandis.
- <sup>1</sup>Deletion notes are to be entered in column 9 stating the date. <sup>2</sup>Inasmuch as the deletion is entered at a separate place in the register, the details of the asset to be deleted in column 1 are also to be repeated in addition to the deletion note in column 9. § 9 no. 5 sentences 4 to 8 shall apply mutatis mutandis.
- Claims for indemnification pursuant to § 20 par. 2a sentence 3 of the Pfandbrief Act shall be entered in column 10 for the derivative transaction concerned, indicating the party obliged to indemnify (name and address).

### § 14 Entry of cover assets of the net present value of statutory overcollateralisation as well as other further cover assets

<sup>1</sup>Entries of cover assets pursuant to § 4 par. 1 sentence 3, § 19 par. 1 sentence 1 no. 2 letters a and b, also in conjunction with § 20 par. 2 sentence 1 no. 2, with § 26 par. 1 sentence 1 no. 3 and with § 26f par. 1 sentence 1 no. 3, to § 19 par. 1 sentence 1 no. 3 letters a to c, also in conjunction with § 26 par. 1 sentence 1 no. 4 and with § 26f par. 1 sentence 1 no. 4, § 19 par. 1 sentence 1 no. 4, also in conjunction with § 26 par. 1 sentence 1 no. 5 and with § 26f par. 1 sentence 1 no. 5, § 20 par. 2 sentence 1 no. 3 letters a and b and no. 4 of the 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. <sup>2</sup>In the case of cover assets pursuant to § 4 par. 1 sentence 3 no. 1 of the Pfandbrief Act, the particular form of the obligation is to be indicated by way of addition. <sup>3</sup>In the case of § 4 par. 1 sentence 3 no. 2a and 3 of the Pfandbrief Act, column 2 shall contain the account-maintaining entity and the IBAN within the meaning of Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22), as amended by Regulation (EU) No 248/2014 (OJ L 84, 20.3.2014, p. 1). <sup>4</sup>Sentence 3 shall apply mutatis mutandis insofar as other money claims used as cover are also monies under an account. <sup>5</sup>If the money claims are respective monies under an account relationship in accordance with § 19 par. 1 sentence 1 no. 2 letter b, also in conjunction with § 20 par. 2 sentence 1 no. 2, with § 26 par. 1 sentence 1 no. 3 and with § 26f par. 1 sentence 1 no. 3, with § 19 par. 1 sentence 1 no. 3 letter c, also in conjunction with § 26 par. 1 sentence 1 no. 4 and with § 26f par. 1 sentence 1 no. 4, as well as with § 20 par. 2 sentence 1 no. 3 letter b and no. 4 of the Pfandbrief Act, the amount may be omitted in column 3. <sup>6</sup>Claims for indemnification pursuant to § 20 par. 3 sentence 3 of Pfandbrief Act shall be entered in column 5 for the claim concerned, indicating the party obliged to indemnify (name and address).

## PART 4

### RECORDS AND CONFIRMATIONS PURSUANT TO § 5 PAR. 2 OF THE PFANDBRIEF ACT

#### § 15 Scope of recording and form of transmission

(1) The record pursuant to § 5 par. 2 of the Pfandbrief Act must reproduce in its entirety all the entries made in the cover registers.

(2) <sup>1</sup>The record shall be transmitted to BaFin in electronic form. <sup>2</sup>A suitable data carrier that is not writable more than once shall be used for this purpose. <sup>3</sup>The name of the Pfandbrief bank, the Pfandbrief categories to which the record stored on the carrier relates as well as the date of the data export shall be permanently affixed to the data carrier.

### § 16 Confirmation by the cover pool monitor

(1) The cover pool monitor has to confirm that the record pursuant to § 5 par. 2 of the Pfandbrief Act at the least reproduces the entries of the last half calendar year in their entirety and that its content concurs with that of these entries.

(2) <sup>1</sup>The cover pool monitor may also by way of a suitable random sample convince themselves of the completeness and the full concurrence in terms of the content. <sup>2</sup>Insofar as they make use of this possibility, they must indicate this within the scope of their 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) <sup>1</sup>The confirmation must be given in writing. <sup>2</sup>§§ 126 and 126a German Civil Code (Bürgerliches Gesetzbuch – BGB) shall apply mutatis mutandis. <sup>3</sup>The cover pool monitor must in addition affix their 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 BaFin

<sup>1</sup>The supervisory authority shall hold the records in safekeeping for two years. <sup>2</sup>The records shall be afforded special protection against unauthorised access and against damage or destruction by external forces. <sup>3</sup>Authorisations to physically access the records shall be restricted to certain staff members of BaFin.

## PART 5

### CLOSING PROVISIONS

#### § 18 Transitional provisions

(1) <sup>1</sup>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 31 December 2006. <sup>2</sup>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) <sup>1</sup>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. <sup>2</sup>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. <sup>3</sup>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.

(3) <sup>1</sup>Notwithstanding § 15 par 1, the record to be transmitted electronically need only reflect entries made in the cover register before 1 July 2021 insofar as they are already available to the Pfandbrief bank in electronic form on 8 October 2022. <sup>2</sup>If the Pfandbrief bank makes use of the option in sentence 1, it shall indicate the reporting date of the record containing the most recent entry not covered by the electronically transmitted record when transmitting the record in electronic form for reporting dates after 30 June 2021. <sup>3</sup>In this case, BaFin shall apply § 17 to the records transmitted for reporting dates up to and including the reporting date referred to in sentence 2, subject to the proviso that the retention period shall be 50 years.

(4) <sup>1</sup>§§ 9 to 12a and § 14 shall apply to entries made before 1 July 2023 in the version applicable on 7 October 2022. § 4 par. <sup>2</sup>1 sentence 5 shall apply only to the pages of a principal register or of a subsidiary register on which entries are made after 30 June 2023.

### § 19 Entry into force

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

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

Description of the cover asset										Deletions			
1	2a	2b	3			4				5			6
a) Con-secutive 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
			Con-secutive no. in section III	Cur-rency	Nominal amount	Debtor	Cur-rency	Amount	Loan no. if applicable				

**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, guarantee by	a) Deleted on (date) b) Cover pool monitor's signature	Remarks	
		Currency	Amount				

**Annex 3** (to § 13) **Form DR 3** Subsidiary register to cover register (mortgages)/(public-sector)/(Ship mortgages)/(Aircraft 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	Bank-internal registration number at the Pfandbrief bank	Name and address of the counterparty	Denomination of the product, product-specific details	Internal registration number at the Pfandbrief bank's counterparty	a) Master contract of b) Individual transaction of c) Original lifetime of transaction d) Transaction maturity date	Collateral	Cover pool monitor's signature	Date, cover pool monitor's signature	Remarks	
										*Amounts and currencies of the exchange of capital *Interest rates *Further details, if applicable

## 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 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.

<sup>3</sup>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 1 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)** <sup>1</sup>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 those provisions or 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.

**Annex 1** (to § 11 par. 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

## Regulation on the determination of mortgage lending values of ships and ships under construction in accordance with § 24 pars. 1 to 3 of the Pfandbrief Act

(Schiffsbeleihungswertermittlungsverordnung – SchiffsBelWertV)

of 6 May 2008, as last amended by Art. 6 of the Pfandbrief Law Amendment Regulation (Pfandbriefrechtliche Änderungsverordnung) of 4 October 2022 (Federal Law Gazette I p. 1614)

On the basis of § 24 par. 5 sentences 1 and 2 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 Transfer of Powers to Issue Regulations to the Federal Financial Supervisory Authority (BAFinBefugV) of 13 December 2002 (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 after hearing the umbrella organisations 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

#### § 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) <sup>1</sup>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. <sup>2</sup>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) <sup>1</sup>In the case of new ship constructions the new construction price constitutes a further ceiling for the ship mortgage lending value. <sup>2</sup>In the case of ship purchases, the ship mortgage lending value may not exceed the purchase price.

(4) <sup>1</sup>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. <sup>2</sup>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) <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>1</sup>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.

<sup>1</sup>Reports which have been presented or commissioned by the borrower or ship owner may not serve as a basis.

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

**(4)** <sup>1</sup>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. <sup>2</sup>Attention must be drawn to the ship's advantages and shortcomings.

**(5)** <sup>1</sup>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 recognised broker or appraiser engaged in the valuation of ships. <sup>2</sup>If an inspection has been carried out by a recognised technical surveyor, the report may also make reference to the inspection report.

## § 6 Inspection

**(1)** <sup>1</sup>The ship to be valued must be inspected as part of the valuation process. <sup>2</sup>To this end, all the ship's papers that are on board are to be inspected. <sup>3</sup>The classifications of hull and machinery are to be determined; the validity period of the classification certificates is to be established. <sup>4</sup>The inspection may also be carried out by a recognised technical surveyor.

**(2)** <sup>1</sup>An inspection may be dispensed with if

1. the ship owner submits to the Pfandbrief bank the classification certificates of a recognised 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

<sup>2</sup>The Pfandbrief bank is required to examine the genuineness of the classification certificates.

## § 7 Valuer

**(1)** <sup>1</sup>The valuer must, in respect of their vocational training and professional activity, possess special knowledge and experience in the field of the valuation of ships. <sup>2</sup>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 themselves carry out the inspection, a technical or engineering vocational training is not necessary.

## § 8 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, letting or charter of the ship to be valued. <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. <sup>4</sup>Sentences 1 to 3 shall also apply to recognised 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 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 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

<sup>1</sup>The purchase price is the contractually agreed price for the purchase of the ship to be valued.

<sup>2</sup>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

<sup>1</sup>In the case of ships under construction, the status value is to be determined as the ship mortgage lending value. <sup>2</sup>The status value corresponds to the construction stage, which must be confirmed in writing by a technical surveyor or the shipyard. <sup>3</sup>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) <sup>1</sup>The ship mortgage lending value shall be monitored at least annually. <sup>2</sup>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. <sup>3</sup>In particular, this applies when the general price level in the respective ship market has fallen to an extent that jeopardises the safety of the lending. <sup>4</sup>A review shall also be carried out if the claim secured by the asset serving as collateral show substantial payment arrears of at least 90 days. <sup>5</sup>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.

## 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 20 April 2009, as last amended by Art. 7 of the Pfandbrief Law Amendment Regulation (Pfandbriefrechtliche Änderungsverordnung) of 4 October 2022 (Federal Law Gazette I p. 1614)

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 20 March 2009 (Federal Law Gazette I p. 607) has been added, the Federal Ministry of Finance decrees in consultation with the Federal Ministry of Finance after hearing the umbrella organisations 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.

#### § 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 sentence 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) <sup>1</sup>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. <sup>2</sup>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. <sup>3</sup>Where no average market value can be determined for a specific aircraft type, sentence 2 shall apply mutatis mutandis.

(3) <sup>1</sup>Where a current market value in accordance with § 9 cannot be determined, another appropriate method is to be applied. <sup>2</sup>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) <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 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.

<sup>2</sup>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) <sup>1</sup>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). <sup>2</sup>Attention must be drawn to the advantages and shortcomings of the aircraft.

(5) <sup>1</sup>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 recognised appraiser engaged in the valuation of aircraft. <sup>2</sup>If an inspection has been carried out by a recognised technical surveyor, the report may also make reference to the inspection report.

### § 6 Inspection

(1) <sup>1</sup>The aircraft to be valued must be inspected as part of the valuation process. <sup>2</sup>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. <sup>3</sup>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. <sup>4</sup>The inspection may also be carried out by a recognised technical surveyor.

(2) <sup>1</sup>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. <sup>2</sup>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. <sup>3</sup>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) <sup>1</sup>The valuer must, in respect of their vocational training and professional activity, possess special knowledge and experience in the field of the valuation of aircraft. <sup>2</sup>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. <sup>3</sup>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 themselves carry out the inspection, technical or engineering vocational training is not necessary.

### **§ 8 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, letting or charter of the aircraft to be valued. <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. <sup>4</sup>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) <sup>1</sup>When determining the current market value one must proceed from the premise of an aircraft that is not subject to a lease agreement. <sup>2</sup>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) <sup>1</sup>The aircraft mortgage lending value shall be monitored at least annually. <sup>2</sup>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. <sup>3</sup>In particular, this shall apply when the general price level in the respective aircraft market has fallen to an extent that jeopardises the safety of the lending. <sup>4</sup>A review shall also be carried out if the claim secured by the asset serving as collateral show substantial payment arrears of at least 90 days. <sup>5</sup>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.

## 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, as last amended by Art. 8 of the Pfandbrief Law Amendment Regulation (Pfandbriefrechtliche Änderungsverordnung) of 4 October 2022 (Federal Law Gazette I p. 1614)

On the basis of § 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 §§ 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 a funding register kept in paper form is maintained in a form that is not permanently bound, each page of the funding register shall contain the information required under § 4

paras. 1 to 3. The monitor shall personally mark each page with at least their initials. All pages of a section or sub-section of the funding register shall be consecutively numbered.

- (3) 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, subject to § 10 par. 2 for non-deleted funding transactions, unless it is noted in column 7 that the transfer rights entered under the funding transaction no longer exist. Insofar as, pursuant to sentence 2, register data for non-deleted funding transactions are not to be transferred to the electronic register, the forms of the funding transaction concerned shall be kept on file as an attachment to the electronic register until their deletion.

#### § 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 recognised as such at any time. It shall be ensured by technical and organisational measures that the original content remains ascertainable. With the exception of the information contained in column 1 and with the exception of deletion notes, sentences 1 and 2 shall not apply to entries for which at least ten years have elapsed since the proper complete deletion.

#### § 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 § 22a par. 1 sentence 2 of the 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 § 22b par. 1 sentence 2 of the 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 subsection is created.
- (4) The funding register shall contain a list of the sections that are being kept in the register. If subsections are created within a section, a list of these is to be kept in the respective section.

## § 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 § 22d par. 2 sentence 2 of the 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 (§ 22d par. 2 no. 1 alternative 1 of the 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 (§ 22d par. 2 no. 1 alternative 2, no. 4 of the 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 local court, the land register district and the number of the land register sheet as well as the postal address of the property or another customary local designation of the location of the property must also be stated. Where an aircraft is involved, the relevant aircraft register folio is to be entered. Where a ship is involved, the name of the register, the register office and the relevant shipping register folio shall 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 subcolumn 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 collateralisation 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 (§ 22d par. 2 sentence 1 no. 2 of the 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 (§ 22d par. 2 sentence 1 no. 3 of the 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 § 22d par. 5 sentences 2 and 3 of the 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. In the case of terminated funding transactions which have not been cancelled, it shall be noted here, stating the relevant data, that the transfer rights registered under the funding transaction no longer exist, in particular because the claims to be transferred have been fully repaid or assigned, the liens to be transferred have been granted for cancellation or assignment or the contracts giving rise to the transfer right have been cancelled or terminated. 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 sentence 2, supplementary sheets may be added which shall become part of the funding register. The supplementary sheets are to be marked with the information in accordance with § 4 pars. 1 to 3 as well as the consecutive number of the respective entry from column 1 letter a of the form. Insofar as properties, aircraft or ships located outside of Germany 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 unauthorised 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. § 3 sentence 3 shall apply mutatis mutandis.

(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 organisational measures to ensure data protection and data security

(1) The data processing systems employed must comply with the level of technology as well as with the requirements of data protection and data security. In particular, they must ensure that

1. their functions can only be used when the user proves their identity towards the system in a secure manner (identification and authentication),
2. the delegated rights of use are administered in the system (administration of authorisations),
3. the delegated rights of use are checked by the system (authorisation 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),
7. any malfunctions are reported immediately (dependability) and
8. the exchange of data from or for the funding register in the system and when using public data networks can take place securely (transmission security).

(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. The original and at least one backup copy of the funding register shall be stored on data carriers located within the jurisdiction of the Pfandbrief Act. In the event of technical outsourcing, it shall also be ensured that the outsourcing company is obliged, in the event of the insolvency of the enterprise keeping the register, to transmit the records in a form that can be processed electronically using standardised database applications to the trustee within the meaning of § 22l par. 1 sentence 1 of the German Banking Act of the enterprise keeping the register.

## PART 3

### CLOSING PROVISIONS

#### § 10 Transitional provision

(1) Funding registers which were established on the basis of §§ 22a to 22o of the German Banking Act before this Statutory Order entered into force may be continued in the present manner until 30 June 2007.

(2) It shall be permissible to keep the electronic funding register only for the sections pursuant to § 22a par.1 sentence 2 of the German Banking Act which are added from the time of introduction or, in the case of keeping the register for third parties, only for the subsections pursuant to § 22b par. 1 sentence 2 of the German Banking Act which are added from the time of introduction. The relevant point in time shall be indicated in the part of the funding register kept in paper form as well as in the part kept electronically. The uniformity of the funding register shall be ensured by clear references to the components kept in paper form.

(3) For entries made in the funding register before 1 July 2023, §§ 5 and 6 shall apply in the version applicable until 30 June 2023. § 2 in the version applicable until 30 June 2023 shall apply to funding transactions completely deleted before 1 July 2023 and to funding transactions for which it is noted in column 7 that the transfer rights entered under the funding transactions no longer exist. § 2 par. 2 sentence 2 shall only apply to pages of a section or subsection on which entries are made after 30 June 2023.

#### § 11 Entry into force

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

Description of the asset										Deletions			Miscellaneous		
1	2		3							4	5	6		7	
	Personal claim(s)		Real estate lien/lien in respect of an aircraft/ship mortgage							Beneficiary	Point in time of the entry	Deletion note		Remarks on the asset for refinancing purposes; if need be, initials of person making the entry	
a)	b)	c)	d)	a)	b)	c)	d)	e)	f)	g)	h)	a)	b)	c)	
Con-secu- live no.	Currency	Amount	If applicable, loan/trans- action no.	Description of the asset	Section of the land reg- ister/aircraft reg- ister/ shipping register	Con- secu- live no.	Cur- rency	Amount	Extent	Legal basis	Date	No. of column	Amount	Date: time / If need be, cover pool monitor's signature	
b) File ref. no.															

## German Banking Act – excerpts

(Kreditwesengesetz – KWG)

### PART 1

#### GENERAL PROVISIONS

- Credit institutions, financial services institutions, financial holding companies, mixed financial holding companies, mixed-activity holding companies 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 operations. Banking business comprises

[...]

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

[...]

(24) Funding enterprises are enterprises which, for self-funding or transferee funding purposes, sell assets or claims of transfer thereto from their business operations to the following enterprises or hold these assets or claims in trust for these enterprises:

- special purpose entities,
- funding intermediaries

3. credit institutions domiciled in an EEA state,
4. insurance companies domiciled in an EEA state
5. pension funds or pension schemes within the meaning of the Act to Improve Company Pensions (Occupational Pensions Act, (Betriebsrentengesetz)), or
6. one of the bodies mentioned in § 2 par. 1 number 1, 2 or 3a;

It is considered to be without any detrimental effect if funding enterprises also pass on economic risks without these being accompanied by a devolution of title.

**(25)** Funding intermediaries are credit institutions which purchase assets or claims of transfer thereto from a funding enterprise's business operations from funding enterprises or other funding intermediaries in order to sell them to special purpose entities or funding intermediaries; it is considered to be without any detrimental effect if they also pass on economic risks without these being accompanied by a devolution of title.

**(26)** Special purpose entities are enterprises whose essential purpose is to raise funds or gain other pecuniary benefits by issuing financial instruments or in some other way in order to purchase assets or claims of transfer thereto from a funding enterprise's business operations from funding enterprises or funding intermediaries; it is considered to be without any detrimental effect if they also take over economic risks without these being accompanied by a devolution of title.

[...]

## § 2 Exceptions

- (1)** Subject to sub-sections (2) and (3), the following are not deemed to be credit institutions:
1. the Deutsche Bundesbank and comparable institutions in other Member States of the European Union, provided that they are members of the European System of Central Banks;
  - 1a. other authorities in the other states of the European Economic Area, insofar as they perform central bank functions;
  - 1b. international financial institutions established by two or more Member States of the European Union for the purpose of mobilising financial resources and providing financial support to its members where they are affected or threatened by serious funding problems;
  2. the KfW banking group (Kreditanstalt für Wiederaufbau);
  3. the statutory social security funds (Sozialversicherungsträger) and the Federal Employment Agency (Bundesagentur für Arbeit);
  - 3a. the public debt administration of the Federal Government, of one of its special funds, or of another state of the European Economic Area, provided that it does not accept funds from others as deposits or other repayable funds from the public or conduct credit business;

[...]

## PART 2

### PROVISIONS FOR FINANCIAL INSTITUTIONS, GROUPS OF INSTITUTIONS, FINANCIAL HOLDING GROUPS, MIXED FINANCIAL HOLDING COMPANIES AND MIXED-ACTIVITY HOLDING COMPANIES

[...]

#### 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 funding enterprise within the meaning of § 1 par. 24 nos. 1 to 6 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.

**(1a)** Paragraph 1 shall apply mutatis mutandis if the claims and real estate liens are administered on a fiduciary basis by the funding enterprise.

**(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 a 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 funding enterprise within the meaning of § 1 par. 24 nos. 1 to 6 is entitled may be entered in a funding register kept by a financial institution or by Kreditanstalt für Wiederaufbau (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, BaFin shall upon application by the funding enterprise approve the keeping of the funding register by another financial institution. The approval by BaFin 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 BaFin 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 exposures or collateral to which the funding enterprises mentioned in § 2 par. 24 sentence 1 numbers 1 to 6 entered in the register as the parties entitled to transfer (transferees) have a transfer claim,
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 collateralisation was concluded.

With regard to numbers 1 and 4, the entries shall be deemed to be adequate if third parties, in particular, the administrator (Verwalter), the creditors' trustee (Sachwalter), BaFin or an insolvency administrator, are able to clearly define and identify the information concerned. If the transferee is a Pfandbrief bank, then it as well as the cover pool monitor appointed pursuant to § 7 par. 1 of the Pfandbrief Act shall be informed of the entry. If the transferee is an insurance company, said insurance company and the trustee who has been appointed in accordance with § 128 of the Insurance Supervision Act (Versicherungsaufsichtsgesetz) shall be informed 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 can be deleted only with the transferee's consent. If the transferee is a Pfandbrief bank or an insurance company, entries can only be deleted with the consent of the Pfandbrief bank's cover pool monitor or the insurance company's trustee. In each case, the date and time of deletion must be recorded in the funding register. Incorrect entries can be deleted with the administrator's consent; par. 2 sentences 3 and 4 shall apply mutatis mutandis. The correction, the date and time of said correction, and the administrator's consent are to be entered in the funding register. Reregistration without deletion of the previous entry shall not produce any legal effects.

(6) The transferee may request from the administrator at any time an excerpt concerning the entries in the funding register with regard to same, on which the administrator has confirmed in writing his/her agreement with the funding register.

### § 22e Appointment of an administrator of the refinancing register

(1) Each enterprise keeping a register shall appoint a natural person to monitor the funding register (funding register monitor). Their 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 BaFin at the proposal of the enterprise keeping the register. BaFin 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 BaFin 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; BaFin 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, they shall be suspended from office in respect of this funding transaction.

(4) At least one 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 they are suspended

from office or if they are prevented from performing their duties they shall be replaced by their deputy.

(5) Entries can be deleted only with the transferee's consent. If the transferee is a Pfandbrief bank or an insurance company, entries can only be deleted with the consent of the Pfandbrief bank's cover pool monitor or the insurance company's trustee. In each case, the date and time of deletion must be recorded in the funding register. Incorrect entries can be deleted with the administrator's consent; par. 2 sentences 3 and 4 shall apply mutatis mutandis. The correction, the date and time of said correction, and the administrator's consent are to be entered in the funding register. Reregistration without deletion of the previous entry shall not produce any legal effects.

(6) The transferee may request from the administrator at any time an excerpt concerning the entries in the funding register with regard to same, on which the administrator has confirmed in writing his/her agreement with the funding register.

#### **§ 22f Relationship of the funding register monitor with BaFin**

(1) The funding register monitor shall provide BaFin with information on the findings and observations they have made in the course of their activities and shall notify BaFin 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 BaFin.

#### **§ 22g Duties of the funding register monitor**

(1) The funding register monitor shall monitor the proper keeping of the funding register. However, their 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 their duties the funding register monitor may avail themselves 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 they obtain 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 BaFin only about facts connected to the monitoring of the funding register.

(3) BaFin 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 their deputy shall receive from the register-keeping enterprise an appropriate remuneration the amount of which is fixed by BaFin, and a reimbursement of necessary expenses.

(2) (no longer in force)

(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 their 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 Court.

(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 collateralisation. 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.

(4) The effects of pars. 1 to 3 shall not be contradicted by the fact that the funding enterprise, by selling the assets entered in the register to the transferee, bears wholly or in part the risk of their recoverability.

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

(1) If all of the transferees entered in a funding register and, insofar as a transferee is a Pfandbrief bank or an insurance company, the Pfandbrief bank's cover pool monitor or the insurance company's trustee consent thereto, the keeping of the funding register can cease one month after BaFin has been duly notified. If all of the transferees entered in a funding register, and insofar as a transferee is a Pfandbrief bank or an insurance company, the Pfandbrief bank's cover pool monitor or the insurance company's trustee consent thereto, the keeping of the register can be transferred, under BaFin's supervision, to a suitable credit institution provided that the registered assets are those of the credit institution taking over the register-keeping activities or the conditions set out in § 22b regarding the keeping of a funding register for third parties have been fulfilled.

(2) The keeping of the register shall further be terminated if the enterprise keeping the register is in the estimation of BaFin unsuitable to keep the register. In such a case the keeping of the register shall, under the supervision of BaFin, be assigned to a financial institution which in the evaluation of BaFin 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 BaFin appoint one or two natural persons proposed by BaFin as funding register administrator(s). The court may deviate from BaFin'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 their appointment, a certificate which they must return to the insolvency court upon termination of their office.

(2) BaFin 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. BaFin shall propose the funding register monitor as Funding Register administrator and, if no funding register administrator exists or if they are permanently prevented from performing their office, it shall propose their deputy or another suitable natural person. The funding register administrator shall be dismissed for good cause upon the application of BaFin.

(3) If the appointment of a second funding register administrator appears necessary for the proper administration of the assets entered in the funding register BaFin may, after hearing the beneficiaries, file a further application in accordance with par. 1 sentence 1. If BaFin 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 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 ad-

ministrator. 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 authorised 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 their 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 BaFin adequate remuneration and a reimbursement of their expenses. The amounts paid shall be refunded separately to BaFin 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 BaFin 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 BaFin appoint one or two persons as funding register administrator(s). BaFin 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 BaFin 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 representative

[...]

(7) Special representatives shall be liable for acts within the scope of par. 2 nos. 1 to 5, 7, 7a, 9, 10 and no. 8, if they themselves take measures to avert danger, for intent and negligence. If the special representative under par. 2 no. 6 or no. 8 has been appointed exclusively to monitor orders issued by BaFin vis-à-vis the institution, to monitor measures taken by the institution to avert danger within the meaning of § 35 par. 2 no. 4 or § 46 par. 1 sentence 1 or to monitor compliance with measures taken by BaFin under § 46, the special representative shall be liable only for intent. This shall also apply insofar as the special representative under § 46 par. 2 sentence 5 authorises exceptions to the ban on sales and payments within an amount limit set by BaFin. In the case of negligent conduct, the special representative'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, liability for damages shall be limited to 50 million euros.

[...]

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