

# § PfandBG

## PFANDBRIEF ACT

Inofficial translation submitted by the Association of German Pfandbrief Banks (vdp)

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

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

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

##### § 2 Licence

(1) <sup>1</sup>A credit institution with its head office within the purview of this Act which wishes to engage in Pfandbrief business shall require the written licence of the Federal Financial Supervisory Authority (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 § 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, and
  - 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, and
  - 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.

<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 1 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 and 3 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 in consultation with the Federal Ministry of Justice and Consumer Protection 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, § 26 par. 1 sentence 1 no. 5 or § 26f 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 in consultation with the Federal Ministry of Justice and Consumer Protection 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 and 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>In the event of Pfandbrief bank insolvency, sentence 1 shall apply mutatis mutandis with regard to a claim to the funds pursuant to § 251 par. 3 sentence 1 of the German Insolvency Code (Insolvenzordnung) or the funds pursuant to § 64 par. 3 sentence 1 of the German Business Stabilisation and Restructuring Act (Unternehmensstabilisierungs- und -restrukturierungsgesetz) insofar as the Pfandbrief bank is entitled to these funds due to the confirmation of an insolvency plan or a restructuring plan to compensate for the worse position resulting from the restructuring of a cover asset made against its will.



### **§ 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 in consultation with the Federal Ministry of Justice and Consumer Protection 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 nos. 1 and 2,
  - 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, 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 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 money**

**(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 ob-

- ligation (“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. 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. A guarantee shall be given inasmuch as the holder of the claim has on the basis of a law, an ordinance, a statute or a legal transaction a claim against the guarantor to the effect that the latter shall, in the event of non-payment by the debtor, provide such funds as are necessary to meet the obligation. The guarantor must not be entitled towards the Pfandbrief bank to assert pleas as a result of a legal relationship with third parties or to disengage from his obligations in a one-sided manner, or
3. when such claims are owed
- a) by a central government, central bank, regional or local administration of one of the states named under no. 1 letter d 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 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

established under sentence 1 insofar as one of the bodies referred to in par. 1 no. 1 letters b) or d), or an export credit agency fulfilling the requirements of par. 1 no. 2, has undertaken to indemnify the Pfandbrief bank in the event that such claim is withdrawn from such Pfandbrief bank with limited business activity and that, in this case, the entitlement to such claim is registered in the cover register for Public Pfandbriefe; insofar as the indemnifying body is seated outside the Member States of the European Union, the claim shall only be excluded from the calculation of the limit referred to in sentence 1 if it is ensured that the preferential right of the Pfandbrief creditors extends to entitlement under this indemnity.

**(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 provided that, if the loan claim were divided among the individual ships and ships under construction, the individual loan claims would be suitable to serve as cover.

**(5)** <sup>1</sup>Ships or ships under construction which are registered abroad may be lent on if, under the laws of the state in whose register the ship or the ship under construction is recorded,

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

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

**(6)** <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 condi-



tions 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 in consultation with the Federal Ministry of Justice and Consumer Protection 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. 2§ 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 in consultation with the Federal Ministry of Justice and Consumer Protection 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 once 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 two weeks following the end of each quarter, and with respect to the end of the quarter and to every class of Pfandbrief in circulation, a report 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 of for how many 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. 2 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) to c), 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 6, in § 20 par. 3, in § 22 par. 5 sentence 2, also in conjunction with § 26 par. 1 sentence 5, or in § 26b par. 4 sentence 2, also in conjunction with § 26f par. 1 sentence 5,
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, separated according to the countries in which the debtors or, in the case of a guarantee, the guaranteeing bodies, are domiciled,
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>In relation to BaFin and the cover pool monitor, the cover pool administrator shall assume the duties which the Pfandbrief bank must carry out in accordance with this Act and the German Banking Act in connection with the management of the cover assets.

**(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 entries shall not be announced. <sup>6</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 owes 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 ap-

plied 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.

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German Pfandbrief Banks**

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