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PFANDBRIEF ACT

Net Present Value Regulation (*Barwertverordnung*)

Regulation on the Determination of the Mortgage

Lending Value (*Beleihungswertermittlungsverordnung*)

Cover Register Statutory Order (*Deckungsregisterverordnung*)

Regulation on the Determination of the Mortgage Lending

Values of Ships and Ships under Construction (*Schiffsbeleihungswertermittlungsverordnung*)

Regulation on the Determination of the Mortgage Lending Values of Aircraft in accordance with § 26d pars. 1 and 2 of the Pfandbrief Act (*Flugzeugbeleihungswertermittlungsverordnung*)

German Banking Act (*Kreditwesengesetz*) – Excerpt

Funding Register Statutory Order (*Refinanzierungsregisterverordnung*)

As at September 2009



**VERBAND DEUTSCHER
PFANDBRIEFBANKEN**

Association of German Pfandbrief Banks

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

(Beleihungswertermittlungsverordnung – BelWertV)

of 12 May 2006

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

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

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

§ 1 Scope of application

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

§ 2 Subject of the determination of value

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

§ 3 Principle of the determination of the mortgage lending value

- (1)** The value on which the lending is based (mortgage lending value) is the value of the property which based on experience may throughout the life of the lending be expected to be generated in the event of sale, unattached by temporary, e.g. economically induced, fluctuations in value on the relevant property market and excluding speculative elements.
- (2)** To determine the mortgage lending value, the future marketability of the property is to be taken as a basis within the scope of a prudent valuation, by taking into account long-term sustainable aspects of the property, the normal and local market conditions, the current use and alternative appropriate uses of the property.

§ 4 Procedure for the determination of the mortgage lending value

- (1)** To determine the mortgage lending value of the property, the income value (§§ 8 to 13) and the depreciated replacement cost value (§§ 14 to 18) of the property serving as cover are to be determined separately. The mortgage lending value is to be derived in accordance with pars. 2 to 6, taking these values into consideration. The property to be valued must be inspected as part of the valuation procedure.
- (2)** In the case of condominium ownership and part ownership, the comparison method in accordance with § 19 must by way of addition be conducted as a control value when determining the mortgage lending value. Where apartments in condominium ownership and individual, self-contained, commercially used units are concerned, a determination of the depreciated replacement cost value may be dispensed with in these cases.

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

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

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

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

PART 2

Report and Valuer

§ 5 Report

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

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

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

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

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

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

§ 6 Valuer

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

§ 7 Independence of the valuer

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

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

PART 3

Valuation methods

SECTION 1

Investment method

§ 8 Basis of the investment method

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

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

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

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

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

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

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

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

§ 10 Gross income

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

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

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

§ 11 Operating expenses

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

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

- (3)** Management costs within the meaning of par. 1 sentence 2 are
1. the costs of staff and equipment needed to manage the property as well as of the supervision,
 2. the costs for book-keeping, accountancy, payment transactions and year-end accounts as well as
 3. the costs for concluding and amending lease agreements and the processing of cases of damage or loss insured against.
- (4)** Maintenance costs within the meaning of par. 1 sentence 2 are costs that have to be incurred as a result of wear and tear, age and weather to preserve the use of the building(s) for the purpose specified during their useful life. They comprise ongoing maintenance and regular repairs of the building(s), but not the modernization of same.
- (5)** Loss of rental income risk within the meaning of par. 1 sentence 2 is the risk of a reduction in income due to irrecoverable rent arrears or the vacancy of space intended for letting. It also serves to cover the costs of prosecution for payment or the termination of a lease agreement or an eviction.
- (6)** Running costs within the meaning of par. 1 sentence 2 are the costs that are incurred on an ongoing basis as a result of ownership of the property or of the designated use of the property as well as of the building(s) and other installations for the purpose specified.
- (7)** The costs for necessary adjustments needed in addition to the maintenance costs to preserve the marketability and safeguard the basic rent level on a permanent basis constitute the modernization risk in accordance with par. 1 sentence 2. They are to be shown as a percentage of the reconstruction costs.

§ 12 Capitalization of net income

- (1)** The net income less the interest rate amount in respect of the land value in accordance with § 9 par. 2 is to be capitalized, depending on the remaining useful life of the building(s) and on the capitalization rate, in accordance with Annex 4 using the resultant multiplier that corresponds mathematically to the discount factor.
- (2)** When measuring the remaining useful life, in contrast with the physical useful life only the period is to serve as a basis in which the building(s) can still be operated economically assuming proper maintenance and operation. The remaining useful economic life is to be estimated for the specific property in question on the basis of the question as to how long the lettability of the property appears to be assured with the assumed income, taking into consideration the user requirements that will change at increasingly shorter intervals. The empirical values specified in Annex 2 for the useful life of building(s) are to be taken into consideration.
- (3)** The capitalization rate corresponds to the assumed interest rate at which the sustained net income, achievable in future, of a property is discounted over the period of its assumed payment on the basis of a prudent assessment and based on experience. It must be derived

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

- (4)** Where the property is used for residential purposes the capitalization rate must not be less than 5 percent, and in the case of commercial use, notwithstanding sentence 3, not less than 6 percent (minimum rates). The bands specified in Annex 3 for individual types of use are to be taken as a basis. The lower limit of each band may be undercut by a maximum of 0.5 percentage points in the case of commercially used properties if the properties concerned are prime properties. This is the case if at least the following criteria are met:
1. a very good location in the urban agglomeration,
 2. a preferred site in keeping with the respective type of property,
 3. a good infrastructure,
 4. good design,
 5. high-quality fixtures and fittings,
 6. a high-quality type of construction,
 7. an especially high marketability,
 8. restriction to the uses retail, wholesale, office and business,
 9. a very good state of the property and
 10. the given possibility to put the property to other uses.

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

§ 13 Determination of the income value in special cases

- (1)** If, when the net income is reduced by the interest rate amount in respect of the land value in accordance with § 9 par. 2, no part is left for the determination of the income value of the building(s), only the land value is in deviation to § 8 par. 3 to be stated as the income value of the property serving as collateral. In this case, the land value is to be reduced by the usual costs that would be incurred to bring the site into line with comparable unbuilt sites. Usual costs within the meaning of sentence 2 are in particular the costs for the demolition of the building(s).
- (2)** Where the remaining useful life of the building(s) is less than 30 years, the part of the income value accounted for by the land value is also to be capitalized in respect of the remaining useful life of the building(s), or the costs for the demolition of the building(s) must be determined, shown and deducted from the income value.
- (3)** In cases in which the land value is more than half of the income value, the report must provide an explanation of the assumptions serving as a basis for the calculation of the land value and specifically describe the preconditions for a replacement building and, if applicable, the requisite expenses.

SECTION 2

Cost approach

§ 14 Basis of the cost approach

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

§ 15 Land value

- (1) To calculate the land value, enquiries must be made regarding
 1. the location, size and layout of the site,
 2. the type and extent of the possible uses stipulated by building laws and the actual use,
 3. the type and nature of ingresses,
 4. the most important commercial and transport connections,
 5. possibilities of connections to services, sewers and drains,
 6. the recoupment charge for local public infrastructure still to be incurred and
 7. existing reference values and comparable prices.
- (2) The land value must be stated in square meters of the site area. When calculating the land value, no higher-grade use may be stated than that permissible.

§ 16 Value of the building(s)

- (1) To determine the value of the building(s), the construction costs per unit of space or area are to be multiplied by the number of the respective reference units of the property to be valued (construction value). The stated construction costs must be appropriate to the respective region and the specific property. The following are, in particular, to be taken into consideration when determining the value:
 1. the intended and possible use
 2. the total floor area and the share out of rooms
 3. the type of construction and the materials used for the shell construction
 4. the fixtures and fittings and the value-affecting auxiliary installations
 5. the age and the state of preservation in accordance with § 17
 6. other value-affecting circumstances as provided for in § 18.

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

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

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

§ 17 Depreciation in Value

- (1) The reduction in value due to age is determined according to the ratio of the remaining useful life to the useful life of the building(s); it is to be expressed as a percentage of the construction value. In determining the reduction in value one may, depending on the type and use of the building(s), proceed from an even reduction in value or a reduction in value that changes with increasing age.
- (2) Where the usual useful life of the building(s) assuming proper use has been prolonged by maintenance or modernization work, or where failure to carry out maintenance or other circumstances have resulted in a shortening of the remaining useful life, the determination of the reduction in value due to age should be based on the changed remaining life and the usual useful life for the building(s).

§ 18 Taking other value-affecting circumstances into consideration

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

SECTION 3

Comparison method

§ 19 Determination of the comparative value

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

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

SECTION 4

Special features of individual properties

§ 20 Building land

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

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

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

§ 22 Land used for agricultural purposes

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

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

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

§ 23 Machinery and operating facilities

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 5

Properties located abroad

§ 25 Cross-border lendings

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

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

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

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

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

SECTION 6

Review of the determination of the mortgage lending value

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

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

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

PART 4

Concluding provisions

§ 27 Source of reference of the German industrial standard

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

§ 28 Entry into force

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

Bonn, May 12, 2006

President of the Federal Financial Supervisory Authority
Sanio

Annex 1

(to § 11 par. 2)

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

Management costs

- a) Residential building
Bands of the costs, calculated on the basis of the units:
 - apartments: EUR 200.00 to 275.00
 - garages: EUR 25.00 to 50.00
- b) Commercial properties

Band: 1 % to 3 % of the annual gross income

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

Maintenance costs

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

- a) e.g. warehouses and production plants with construction costs of EUR 250.00 to 500.00/m²: 0.8 % to 1.2 %, absolute lower limit: EUR 2.50/m²
- b) e.g. commercial properties of simple standard and hypermarkets with construction costs of more than EUR 500.00/m²: 0.8 % to 1.2 %, absolute lower limit: EUR 5.00/m²
- c) e.g. residential buildings and commercial buildings of medium standard and construction costs of more than EUR 1,000/m²: 0.5 % to 1 %, absolute lower limit: EUR 7.50/m²
- d) e.g. high-grade office and retail and other commercial properties with construction costs of more than EUR 2,000.00/m²: 0.4 % to 1 %, absolute lower limit: EUR 9.00/m²
- e) Garages and underground parking spaces: EUR 30.00 to 80.00 per parking space

Loss of rental income risk

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

Modernization risk

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

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

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

Annex 2

(to § 12 par. 2)

Empirical values for the useful life of building(s)

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

Annex 3

(to § 12 par. 4)

Bands for capitalization rates

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

Multiplier table

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

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