

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

(Schiffsbeleihungswertermittlungsverordnung – SchiffsBelWertV)

of May 6, 2008

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

PART 1

General Provisions and Principles of Procedure

§ 1 Scope of application

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

§ 2 Subject of the determination of value

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

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

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

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

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

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

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

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

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

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

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

PART 2

Report and valuer

§ 5 Report

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

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

- (3) The report must comment on the parameters mentioned in § 4.
- (4) The report must describe the type of ship and its practical usefulness, in particular with regard to navigation area, usability and load capacity, taking into consideration the existing equipment, in particular with regard to the loading and unloading facilities. Attention must be drawn to the ship's advantages and shortcomings.
- (5) When determining the current market value and the average market value of the last ten years, the report may make reference to the assessment by a recognized broker or appraiser engaged in the valuation of ships. If an inspection has been carried out by a recognized technical surveyor, the report may also make reference to the inspection report.

§ 6 Inspection

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

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

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

§ 7 Valuer

- (1) The valuer must, in respect of his vocational training and professional activity, possess special knowledge and experience in the field of the valuation of ships. When selecting the valuer the Pfandbrief bank must convince itself that, in addition to many years of professional experience in the valuation of ships, the valuer possesses the knowledge that is needed specifically to prepare a ship mortgage lending value assessment, in particular of the ship market.
- (2) If the valuer does not himself carry out the inspection, a technical or engineering vocational training is not necessary.

§ 8 Independence of the valuer

- (1) The valuer must not be involved either in the loan acquisition and loan decision-making process or in the brokering, sale, letting or charter of the ship to be valued. He must not be related to or have any other legal or business relationship with the borrower, nor may he have interests of his own in the outcome of the report. Further, the valuer may not establish the mortgage lending value or process the loan. Sentences 1 to 3 shall also apply to recognized assessors, brokers or technical surveyors to whose assessment or inspection report the report makes reference.
- (2) Reports conducted by valuers in the Pfandbrief bank's employ may serve as a basis for determining the ship mortgage lending value only if the valuers in question are, within the scope of the Pfandbrief bank's structural organization, accountable only to the executive management or are solely part of a unit of valuers which reports directly to the executive management, or are part of a unit comprising all the valuers in question and are not, moreover, up to and including executive management level assigned to a division of the Pfandbrief bank in which ship finance transactions are either secured or are subject to singular decision.

PART 3

Valuation methods

§ 9 Current market value

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

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

§ 10 Average market value

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

§ 11 New construction price

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

§ 12 Purchase price

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

§ 13 Valuation of ships under construction

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

PART 4

Review of the ship mortgage lending value and entry into force

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

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

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

§ 15 Entry into force

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

Bonn, May 6, 2008

President of the Federal Financial Supervisory Authority
Sanio