

## **ARTICLES OF ASSOCIATION OF PKP CARGO SPÓŁKA AKCYJNA**

### **I. GENERAL PROVISIONS**

#### **§ 1**

1. The founder of the Company is Polskie Koleje Państwowe S.A. (hereinafter: "PKP S.A.").
2. The Company is established for an unlimited duration.
3. The name of the Company is PKP CARGO Spółka Akcyjna and may use the abbreviated name of: PKP CARGO S.A.
4. The Company may use its proprietary graphic sign.
5. The Company's seat is Warsaw.

#### **§ 2**

The Company operates on the basis of the Commercial Company Code, Act on Commercialization, Restructuring and Privatization of PKP, these Articles of Association and other relevant regulations.

#### **§ 3**

1. The Company conducts its business in the Republic of Poland and abroad.
2. Within the framework of its business activity, the Company may set up branches, affiliate offices, representative offices, enterprises, companies and other establishments, participate in other business organizations in Poland and abroad and establish other local and foreign companies and accede to other companies.

#### **§ 4**

The Company may issue bonds, including convertible bonds or bonds with a pre-emptive right.

### **II. LINE OF BUSINESS**

#### **§ 5**

1. The Company's line of business is:
  - 1) activities related to transportation and warehouse management, including:
    - a) passenger rail transport, interurban – PKD 49.10.Z;
    - b) rail cargo transport – PKD 49.20.Z;
    - c) cargo warehousing and storage – PKD 52.10.A;
    - d) warehousing and storage of other merchandise – PKD 52.10.B;
    - e) service activities incidental to land transport – PKD 52.21.Z;
    - f) cargo handling in other transshipment points – PKD 52.24.C;

- g) activities of other transport agencies – PKD 52.29.C;
- 2) activities related to wholesale and retail sale; repair of motor vehicles, excluding motorcycles, including:
  - a) maintenance and repairs of motor vehicles, except motorcycles – PKD 45.20.Z;
  - b) wholesale of motor vehicle parts and accessories, excluding motorcycles – PKD 45.31.Z;
  - c) retail sale of motor vehicle parts and accessories, except motorcycles – PKD 45.32.Z;
  - d) wholesale of other machinery and equipment – PKD 46.69.Z;
  - e) wholesale of fuel and derivative products – PKD 46.71.Z;
  - f) wholesale of waste and scrap – PKD 46.77.Z;
  - g) non-specialized wholesale trade – PKD 46.90.Z;
  - h) retail sale of automotive fuel in petrol stations – PKD 47.30.Z;
  - i) retail sale of other new goods in specialized stores – PKD 47.78.Z;
  - j) retail sale of second-hand goods in specialized stores – PKD 47.79.Z;
  - k) retail sale conducted through the mail or the Internet – PKD 47.91.Z;
  - l) other retail sale not in stores, stalls or markets – PKD 47.99.Z;
- 2a) financial and insurance activities, including:
  - a) activities of financial holding companies – PKD 64.20.Z;
  - b) other financial service activities, except insurance and pension funding, not elsewhere classified – PKD 64.99.Z;
  - c) other activities auxiliary to financial services, except insurance and pension funding – PKD 66.19.Z;
- 3) professional, scientific and technological activity, including:
  - a) accounting and bookkeeping activities; tax consulting – PKD 69.20.Z;
  - a<sup>1</sup>) activities of head offices and holding companies, except financial holding companies – PKD 70.10.Z;
  - a<sup>2</sup>) other business and management consulting activities – PKD 70.22.Z;
  - a<sup>3</sup>) testing and analysis related to food quality – PKD 71.20.A;
  - b) other technical testing and analysis – PKD 71.20.B;
  - c) other research and experimental development on natural sciences and engineering – PKD 72.19.Z;
  - d) advertising agencies – PKD 73.11.Z;
  - e) intermediation in the sale of advertising time and space on the radio and on television – PKD 73.12.A;

- f) intermediation in the sale of advertising space in printed media – PKD 73.12.B;
  - g) intermediation in the sale of advertising time and space in electronic media (Internet) – PKD 73.12.C;
  - h) intermediation in the sale of advertising time and space in other media – PKD 73.12.D;
  - i) other professional, scientific and technical activities not elsewhere classified – PKD 74.90.Z;
- 4) activity related to construction, including:
- a) development of building projects – PKD 41.10.Z;
  - b) construction of roads of motorways – PKD 42.11.Z;
  - c) construction of railways and underground railways – PKD 42.12.Z;
  - d) construction of bridges and tunnels – PKD 42.13.Z;
  - e) construction of pipelines and distribution networks – PKD 42.21.Z;
  - f) construction of utility projects for electricity and telecommunications – PKD 42.22.Z;
  - g) construction of water engineering facilities – PKD 42.91.Z;
  - h) construction of other civil engineering projects not elsewhere classified – PKD 42.99.Z;
- 5) real estate activities, including:
- a) buying and selling of own real estate – PKD 68.10.Z;
  - b) renting and operating of own or leased real estate – PKD 68.20.Z;
  - c) managing real properties under engagement – PKD 68.32.Z;
- 6) administrative and support service activities, including:
- a) renting and leasing of other motor vehicles except motorcycles – PKD 77.12.Z;
  - b) renting and leasing of other machinery, equipment and tangible goods not elsewhere classified – PKD 77.39.Z;
  - c) auxiliary activity associated with cleaning buildings – PKD 81.10.Z;
- 7) accommodation and food service activities, including:
- a) hotels and similar accommodation – PKD 55.10.Z;
  - b) holiday accommodation and other short-stay accommodation – PKD 55.20.Z;
  - c) other accommodation – PKD 55.90.Z;
  - d) restaurants and other stationary food service points – PKD 56.10.A;
- 8) arts, entertainment and recreation, including:
- a) museums activities – PKD 91.02.Z;
  - b) operation of historical sites and buildings and similar visitor attractions – PKD 91.03.Z;
- 9) other activities, including:

- a) repair and maintenance of other transport equipment – PKD 33.17.Z;
- b) production and supply of steam, hot water and air for air conditioning systems – PKD 35.30.Z;
- c) other monetary intermediation – PKD 64.19.Z;
- d) non-scholastic forms of education not elsewhere classified – PKD 85.59.B;
- e) publishing of journals and other periodicals – PKD 58.14.Z;
- f) other publishing activities – PKD 58.19.Z;
- g) data processing, hosting and related activities – PKD 63.11.Z;
- h) public relations and communication activities – PKD 70.21.Z;
- i) other business and management consulting activities – PKD 70.22.Z;
- j) market research and public opinion polling – PKD 73.20.Z;
- k) activities of employment placement agencies – PKD 78.10.Z;
- l) other human resource provision – PKD 78.30.Z;
- m) combined office administrative service activities – PKD 82.11.Z;
- n) activities related to the organization of trade shows, exhibitions and congresses – PKD 82.30.Z;
- o) activities of collection agencies and credit bureaus – PKD 82.91.Z;
- p) other business support service activities not elsewhere classified – PKD 82.99.Z.

and any activities related to the activities mentioned above.

2. An amendment to these Articles of Association, which involves a material change of the Company's line of business (Article 416 § 1 of the Commercial Company Code) does not require a buyout of the shares held by the shareholders objecting to such an amendment if the relevant resolution of the Shareholder Meeting in this matter is adopted by a majority of two thirds of the votes in the presence of shareholders representing at least one half of the share capital.
3. If the regulations require special permits or concessions issued by appropriate state or local administration authorities are required to conduct any business within the Company's enterprise then such activity may only be taken up after they are obtained.
4. The Company performs tasks related to the universal duty to defend and to participate in civil defense (Act on Universal Duty to Defend the Republic of Poland (Ustawa o powszechnym obowiązku obrony Rzeczypospolitej Polskiej) – Journal of Laws 2012, item 461, as amended). The coordination of tasks performed by the Company in respect to the universal duty to defend is subordinated to the President of the Management Board of PKP S.A. The tasks performed by the Company under the universal duty to defend are executed and financed on the terms and conditions described in separate regulations.

### **III. SHARE CAPITAL**

#### **§ 6**

#### **Share capital**

1. The Company's share capital is PLN 2,239,345,850 (two billion two hundred thirty nine million three hundred forty five thousand eight hundred fifty Polish zloty) and is divided into:

- 1) 43,338,000 (forty three million three hundred thirty eight thousand) A series bearer shares with a par value of PLN 50 (fifty Polish zloty) each;
  - 2) 15 (fifteen) B series bearer shares with a par value of PLN 50 (fifty Polish zloty) each;
  - 3) 1,448,902 (one million four hundred forty eight thousand nine hundred two) C series registered common shares with a par value of PLN 50 (fifty Polish zloty) each.
2. The share capital was paid up in full before the Company was registered.
  3. The Company's shares are common shares.
  4. Conversion of bearer shares into registered shares is not permitted.
  5. The C series shares mentioned in section 1 item 3) are subject to a prohibition to sell them within two years of the first listing of the Company's shares on the main market of the Warsaw Stock Exchange (Giełda Papierów Wartościowych w Warszawie S.A.). On the date of expiration of the above prohibition on the sale of shares, series C shares are converted into bearer shares.

## **§ 7**

### **Supplementary and reserve capital**

1. The Company establishes supplementary capital to cover the losses that may arise in connection with the Company's activity. Annual charges to supplementary capital should be at least 8% of the company's profit for each financial year until the capital reaches at least one third of the share capital. The amount of charges to supplementary capital is set by the Shareholder Meeting. The use of the supplementary capital is decided upon by the Shareholder Meeting, however, the portion of the supplementary capital representing one-third of the share capital may only be used to cover a loss shown in the financial statements.
2. The Company establishes reserve capital (funds) from charges to net profit for such capital. The amount of the charge for reserve capital is set by the Shareholder Meeting. Reserve capital may be used to cover special losses or expenditures, to increase share capital and to pay out dividends. The Company may additionally create other funds as permitted by the law.
3. The Company may create other funds.

## **§ 8**

### **Retirement of shares**

1. The Company's shares may be retired based on a resolution adopted by the Shareholder Meeting with the consent of the shareholder, whose shares are to be retired (voluntary retirement).
2. The shareholder, whose shares have been retired, is entitled to remuneration on this account. With the shareholder's consent, such retirement may be effected without remuneration.
3. Retirement of shares requires a reduction of the share capital.

## **IV. CORPORATE BODIES**

### **§ 9**

The Company's corporate bodies are as follows:

- 1) Shareholder Meeting;
- 2) Management Board; and
- 3) Supervisory Board.

## **V. SHAREHOLDER MEETING**

### **§ 10**

1. The chairperson of the Shareholder Meeting is appointed in writing by the President of the Management Board. The Shareholder Meeting Chairperson appointed in the above manner opens the Shareholder Meeting. If the President of the Management Board fails to appoint the Chairperson of the Shareholder Meeting prior to the designated start time of the meeting, the provisions of Article 409 § 1 of the Commercial Company Code are applied.
2. The Extraordinary Shareholder Meeting may be convened by a shareholder whose stake in the total number of votes in the Company is greater than 33%. In such a case, the shareholder convening the Extraordinary Shareholder Meeting appoints the Chairman of the Shareholder Meeting. Provisions of this section are without prejudice to Article 400 § 1 of the Commercial Company Code.
3. Shareholder Meetings may be held at the Company's registered office.
4. The Shareholder Meeting is valid irrespective of the number of shares represented thereat, subject to § 27 section 7.
5. If the announcement on convening the Shareholder Meeting contains information that the shareholders may participate in the Shareholder Meeting by means of electronic communication then the Company is obligated to make sure that the shareholders are able to participate in the Shareholder Meeting by means of electronic communication.
6. Detailed rules for holding Shareholder Meetings with the use of means of electronic communication are defined by the Management Board in consideration of the provisions of the Shareholder Meeting bylaws. The Management Board publishes such rules on the Company's website. These rules should, in particular, allow for:
  - 1) real-time transmission of the Shareholder Meeting;
  - 2) real-time bilateral communication where shareholders may take the floor during a Shareholder Meeting from a location other than the meeting;
  - 3) exercise of the voting rights by the shareholder in person or through a proxy during the Shareholder Meeting from a location other than the place of holding the Shareholder Meeting.
7. A Shareholder Meeting should be attended by members of the Supervisory Board and of the Management Board who can answer questions asked during the Shareholder Meeting.

### **§ 11**

1. Resolutions of the Shareholder Meeting are adopted with the absolute majority of votes cast, unless the law or these Articles of Association provide for a more strict requirements for adopting a resolution.
2. Each share gives its holder one vote at the Shareholder Meeting.

### **§ 12**

1. Shareholder Meeting resolutions are required in matters identified by the provisions of the Commercial Company Code or other legislative acts or these Articles of Association.

2. Powers of the Shareholder Meeting include, in addition to the matters identified by the provisions of the Commercial Company Code and other legislative acts:
  - 1) appointing and dismissing the President of the Management Board and other Management Board members in the case referred to in § 14 section 2;
  - 2) appointing and dismissing Supervisory Board members, subject to the personal rights of PKP S.A. specified in § 19 section 1 and section 9 sentence 1 and rights of the Company's employees specified in § 19 section 3;
  - 3) setting the compensation of Management Board members as long as the stake in the Company held by PKP S.A. is greater than 50% of the Company's share capital and as long as required by the mandatory provisions of law;
  - 4) accepting Shareholder Meeting bylaws.
3. Purchase and sale of real estate, perpetual usufruct or interests in real estate does not require a Shareholder Meeting resolution.

### § 13

1. Voting rights of the shareholders holding more than 10% of all the votes in the Company are restricted in such a manner that no such shareholder may exercise more than 10% of all the votes in the Company existing on the date of the Shareholder Meeting. This restriction does not apply for the purposes of determining the obligations of buyers of significant blocks of shares, which are prescribed by the Act on Public Offering.
2. The restriction of the voting rights referred to in section 1 does not apply to shareholders who, on the date of adoption of the Shareholder Meeting resolution introducing the restriction mentioned in section 1, were entitled to exercise voting rights, also as users, attached to shares representing more than 10% of the total number of votes existing in the Company or any other entity that acquires the Company's shares held by the shareholders referred to above in connection with their liquidation.
3. For the purposes of restricting the voting right according to section 1, the votes of the shareholders connected by a parent or subsidiary relationship are added up according to the principles described below.
4. A shareholder within the meaning of this paragraph is every person, including its controlling and subsidiary entity, vested, directly or indirectly, with voting rights at the Shareholder Meeting on the basis of any legal title; this pertains also to persons who do not have the Company's shares, in particular users, pledgees, persons entitled under a depositary receipt within the meaning of the provisions of the Act on Trading, and persons entitled to participate in the Shareholder Meeting despite disposal of their shares after the date of establishing the right to participate in the Shareholder Meeting.
5. A controlling entity or a subsidiary for the purposes of this paragraph is understood respectively as a person:
  - 1) meeting the prerequisites enumerated in Article 4 § 1 item 4) of the Commercial Company Code; or
  - 2) having the status of a controlling company, subsidiary company or a simultaneously controlling company and subsidiary company, within the meaning of the Act on Competition and Consumer Protection; or

- 3) having the status of a controlling entity, higher level controlling entity, subsidiary, lower level subsidiary, or having simultaneously the status of a controlling entity (including higher level controlling entity) entity and subsidiary (including lower level subsidiary and co-subsidiary) within the meaning of the Accounting Act; or
  - 4) who exerts (controlling entity) or is subject to (subsidiary entity) decisive influence within the meaning of the Act on Transparency of Financial Relations; or
  - 5) whose votes attached to the Company's shares held directly or indirectly are cumulative with the votes of another person or other persons on the principles set forth in the Act on Public Offering in connection with holding, selling or acquiring significant stakes of the Company's shares.
6. The shareholders whose votes are accumulated and reduced according to the provisions of sections 3-7 are jointly referred to as a Grouping. Vote accumulation involves adding up the votes held by individual shareholders from a Grouping. Reduction of votes involves reduction of the total number of votes in the Company at the Shareholder Meeting vested in the shareholders from a Grouping. Reduction of votes is effected according to the following principles:
- 1) for each shareholder associated with a Grouping, a percentage of votes vested in the shareholder in the cumulative number of votes vested in the entire Grouping is calculated;
  - 2) the number of votes corresponding to 10% of all the votes in the Company is calculated on the date of holding the Shareholder Meeting;
  - 3) for each shareholder, the product of the percentage mentioned in item 1) and the number of votes mentioned in item 2) is calculated;
  - 4) the number of votes vested in each shareholder forming part of the Grouping after the reduction is the number obtained in item 3) rounded up to a full vote;
  - 5) the reduction of the voting rights pertains also to shareholders who are not present at the Shareholder Meeting.
7. In order to determine the basis for vote accumulation and reduction, a Company shareholder, the Management Board, Supervisory Board and individual members of these bodies, as well as the Chairperson of the Shareholder Meeting may demand that a Company shareholder, whose votes are reduced, provide information as to whether he/she is a person having the status of a controlling entity or subsidiary of another shareholder within the meaning of section 5.
8. In case of doubt, the provisions governing the reduction of voting rights should be interpreted in accordance with Article 65 § 2 of the Civil Code.

## **VI. MANAGEMENT BOARD**

### **§ 14**

1. The Management Board is composed of one to five members, including the President of the Management Board, appointed for a joint term of office of three years.
2. As long as PKP S.A. holds all the votes at the Shareholder Meeting and as long as it is required by the mandatory provisions of law, the President of the Management Board and other Management Board member is appointed and dismissed by the Shareholder Meeting.
3. Subject to section 2 above, as long as the State Treasury, PKP S.A. or other state legal persons hold less than 100% of the Company's shares, the President of the Management Board and other Management Board members are appointed and dismissed by the Supervisory Board, on the terms



and conditions set forth in sections 4-6 below.

4. In the event that PKP S.A.'s share in the Company's share capital is 50% or less, PKP S.A. will have the personal rights to select the candidates for the President of the Management Board on its own. The personal rights referred to in the preceding sentence are exercised by way of delivering a written statement to the Supervisory Board Chairperson.
5. The Supervisory Board elects one Management Board member from among the candidates submitted by the Company's employees. A candidate should have higher education, at least 5-year tenure of work in the PKP capital group and have no criminal record. The bylaws for electing candidates for a representative of employees in the Management Board are adopted by the Supervisory Board. A failure to appoint an employee representative to the Management Board does not prevent the Management Board from being appointed or from adopting effective resolutions. The power referred to in the first sentence above was granted to the Company's employees in connection with Article 4 section 4 of the Act on Commercialization, Restructuring and Privatization of PKP and the provisions of the Employee Guarantee Package.
6. Appointment of Management Board members (including the President of the Management Board and the Management Board member mentioned in section 5 above) is governed by the following rules:
  - 1) Management Board members (including the President of the Management Board and the Management Board member mentioned in section 5 above) will be appointed following a recruitment procedure, whose rules and course is set forth in these Articles of Association and the bylaws adopted by the Supervisory Board ("**Bylaws for Appointing Management Board Members**") subject to provisions of the Regulation issued by the Council of Ministers on 18 March 2008 on the Conduct of the Recruitment Procedure for the Position of Management Board Member in Certain Commercial Companies (Journal of Laws of 2003 No. 55 Item 476, as amended); The Bylaws for Appointing Management Board Members define in particular the qualifications that will be evaluated when selecting candidates for respective positions in the Management Board; amendments to the Bylaws for Appointing Management Board Members require consent of all Supervisory Board members who meet the independence criteria and are appointed following the rules set forth in § 20 and 21 below;
  - 2) the Management Board members appointment procedure is carried out with participation of the nominations committee, whose composition and functions are defined in § 26 sections 3 and 4;
  - 3) the recruitment procedure for the position of a Management Board member is prepared and organized by a professional personnel consultancy company selected by a resolution adopted by the Supervisory Board on the terms and conditions set forth in the Bylaws for Appointing Management Board Members ("**recruitment consultant**"); responsibilities of a recruitment consultant include organization and handling of the recruitment procedure for the position of a Management Board member under an ongoing supervision of the nominations committee, including in particular preparations, organization and active participation in interviews with candidates for the position of a Management Board member; the recruitment consultant will prepare written opinions containing assessments of each candidate for the position of a Management Board member; subject to the provisions of the Articles of Association, detailed powers and tasks of the recruitment consultant in the recruitment procedure are defined in the Bylaws for Appointing Management Board Members;

- 4) the written opinion containing an assessment of respective candidates for the position of a Management Board member should contain an indication of at least one candidate with a positive opinion for each of the vacancies on the Management Board, which are being filled, while if the recruitment consultant issues a positive opinion on two or more candidates, all such candidates should be presented in the opinion; in the event that a recruitment consultant's opinion contains no indication of at least one candidate with the recruitment consultant's positive opinion, according to the terms and conditions set forth in the Bylaws for Appointing Management Board Members, the recruitment procedure will be closed without resolution and the Supervisory Board should launch a new recruitment procedure; other cases of closing the recruitment procedure without a decision and launching a new recruitment procedure are described in the Bylaws for Appointing Management Board Members;
  - 5) appointment to the position of a Management Board member is made only from among the candidates taking part in the recruitment procedure who received a positive opinion from the recruitment consultant;
  - 6) the nominations committee accepts a report on the conducted recruitment procedure, which should contain in particular a representation on compliance of the procedure to appoint a Management Board member with provisions of these Articles of Association and the Bylaws for Appointing Management Board Members; detailed content of the report is defined in the Bylaws for Appointing Management Board Members; within 7 days of the date of signing the report, the Company will make the report public, in the form and in accordance with the rules set forth in the Bylaws for Appointing Management Board Members, including in the form of a current report and by publication on the Company's website;
  - 7) after each amendment of the Bylaws for Appointing Management Board Members, the nominations committee will prepare a written report with detailed information on the amendments, their nature and scope and also the rationale for the amendments; the report will also contain a representation on compliance of the procedure of amending the Bylaws for Appointing Management Board Members with the Articles of Association and the Bylaws for Appointing Management Board Members; subject to provisions of the Bylaws for Appointing Management Board Members, detailed content of the report is defined by the nominations committee; the Supervisory Board will deliver the written report of the nominations committee to the Company's shareholders along with the materials for the Company's shareholders for the next Shareholder Meeting;
  - 8) costs of the recruitment procedure, including remuneration of the recruitment consultant, will be covered by the Company.
7. If any of the shareholders or any Grouping within the meaning of § 13 section 6 reaches or exceeds a 33% stake in the Company's share capital then the Supervisory Board will require a 75% majority of votes to adopt a resolution to dismiss or suspend the Management Board or a Management Board member. The 75% majority is also required for the Shareholder Meeting to adopt a resolution to dismiss or suspend the Management Board or a Management Board member.
  8. The provisions in section 7 above do not apply to a situation in which the shareholder who reached or exceeded the 33% stake in the Company's share capital is PKP S.A. or the Grouping where PKP S.A. is a member.
  9. The Supervisory Board sets the number of Management Board members.

10. A Management Board member may not discharge an elected function or sit in the bodies of a company, inter-company or national trade union organization, a federation of trade unions or a confederation of trade unions.
11. Whereas the obligation ties connecting each Management Board member with the Company constitute a unique organizational and corporate relationship aimed at handling the Company's matters and managing the Company with due diligence, from which the Management Board member's obligation ensues to act with care and an increased measure of diligence, given the professional nature of duties performed in a management body, each Management Board member:
  - 1) is obligated to exercise his/her rights and perform his/her obligations in person, with utmost professional care, subject to the Articles of Association and applicable provisions of law;
  - 2) cannot take any action or perform any activities that would be in contradiction to his/her duties or could raise suspicion of bias of that Management Board member or of promotion of his/her private interest;
  - 3) is obligated to keep confidential all information and documents, which constitute the Company's corporate secret and documents conveyed to the Management Board member in connection with the exercise of rights and performance of duties in the Management Board and not to disclose them to other persons, unless required by mandatory provisions of law.

#### **§ 15**

If the Management Board consists of one person then the Company is represented by the President of the Management Board. If the Management Board consists of more than one person then the Company is represented by the President of the Management Board acting individually or by two Management Board members acting jointly or by a Management Board member acting jointly with a commercial proxy.

#### **§ 16**

1. The Management Board runs the Company's affairs and represents the Company.
2. The Management Board is authorized to run all of the Company's affairs not restricted for the Shareholder Meeting or the Supervisory Board.
3. The matters, which do not go beyond the Company's ordinary business do not require a Management Board resolution, while the following matters require a Management Board resolution:
  - 1) taking out loans and borrowings;
  - 2) establishing mortgages and pledges and other security interests;
  - 3) extending financial guarantees and sureties by the Company;
  - 4) issuing, guaranteeing and endorsing bills of exchange;
  - 5) approving the Company's employee remuneration system;
  - 6) establishing and liquidating the Company's representative office abroad;
  - 7) approving the Company's organizational bylaws and organizational chart;

- 8) appointing a commercial proxy;
  - 9) paying an interim dividend as an advance towards the dividend anticipated at the end of the financial year;
  - 10) creating reserve capital;
  - 11) matters referred by the Management Board to the Shareholder Meeting or to the Supervisory Board.
4. Management Board resolutions are adopted by an absolute majority of votes. If an equal number of votes is cast “for” and “against” together with abstentions, the President of the Management Board shall have the casting vote.
  5. Management Board members may participate in adopting Management Board resolutions by casting their vote in writing through another Management Board member. Such a vote in writing may not be given if the voting concerns issues introduced to the agenda during the Management Board meeting.
  6. The Management Board may adopt resolutions by following a written procedure or by using means of direct remote communication.
  7. The Management Board operates pursuant to the bylaws, which are approved by the Supervisory Board upon a motion from the President of the Management Board.
  8. The President of the Management Board directs the work of the Management Board. The special rights of the President of the Management Board in this respect are defined by the Management Board bylaws.
  9. The President of the Management Board convenes the Management Board meetings and chairs them. The President of the Management Board may authorize other Management Board members to convene and chair Management Board meetings.
  10. Special powers of the President of the Management Board include performance defense tasks in the Company resulting from the regulations on general defense obligation.

#### **§ 17**

The Management Board is obligated to submit to the Supervisory Board, at least on a quarterly basis, reports on material events in the Company’s activity. Each such report will also include a statement on the Company’s revenues, costs and financial result.

#### **§ 18**

Upon the Supervisory Board’s approval, the Management Board may pay out interim dividend as an advance towards the dividend anticipated at the end of the financial year.

### **VII. SUPERVISORY BOARD**

#### **§ 19**

1. Subject to sections 8 and 10 below and § 22, the Supervisory Board consists of between eleven and thirteen members, including the Chairperson and the Deputy Chairperson of the Supervisory Board, appointed for a joint term of office. Subject to the provisions of sections 2 and 3 below, Supervisory Board members are appointed and dismissed by the Shareholder Meeting.

2. PKP S.A. is entitled to appoint and dismiss Supervisory Board members in a number equal to half the composition of the Supervisory Board determined in accordance with section 8 (if such number is not an integer, it should be rounded down to the nearest integer) plus one. At least one of the Supervisory Board members appointed by PKP S.A. in accordance with this section should comply with the conditions of independence within the meaning of Article 86 Section 5 of the Act on Statutory Auditors and be qualified in accounting or auditing.
3. The Company's employees are entitled to appoint and dismiss three employee representatives to the Supervisory Board. The bylaws for electing employee representatives to the Supervisory Board are adopted by the Supervisory Board. A failure to elect the Supervisory Board members representing the employees does not prevent the Supervisory Board from being appointed or from adopting effective resolutions.
4. Subject to section 5 below, the Supervisory Board elects the Chairperson and the Deputy Chairperson of the Supervisory Board from among its members.
5. PKP S.A. has the personal right to appoint the Chairperson of the Supervisory Board from among the Supervisory Board members elected by voting in separate groups in accordance with the procedure prescribed in Article 385 § 3-7 of the Commercial Company Code. In the event of PKP S.A.'s failure to appoint the Chairperson of the Supervisory Board within thirty days of the election of the Supervisory Board in accordance with the procedure referred to in the preceding sentence, the Supervisory Board elects the Chairperson of the Supervisory Board from among its members.
6. The personal rights mentioned above in section 2 and section 5 are performed by way of delivering to the Company a written statement on appointing or dismissing a given Supervisory Board member or on selecting the Supervisory Board Chairperson.
7. The term of office of Supervisory Board members is three years.
8. The number of Supervisory Board members is set by PKP S.A. and this provision is also applicable to the election of the Supervisory Board by voting in separate groups in accordance with the procedure prescribed in Article 385 of the Commercial Company Code (in which case the Supervisory Board may be composed of between five and thirteen members). The personal rights referred to in the preceding sentence are performed by way of delivering a written statement to the Company.
9. In the event of expiration of the mandate of any Supervisory Board member elected by voting in separate groups in accordance with the procedure prescribed in Article 385 § 3-7 of the Commercial Company Code, PKP S.A. will have the personal right to appoint one new Supervisory Board member in his/her place. The other Supervisory Board members is appointed by the Shareholder Meeting.
10. In the event a Supervisory Board member appointed from among persons elected by employees is dismissed during the term of office, until such vacancy in the position of a Supervisory Board member elected by employees is filled, resolutions adopted by the Supervisory Board will be valid provided that the Supervisory Board is composed of at least five members.
11. The power referred to in section 3 above was granted to the Company's employees in connection with Article 4 section 4 of the Act on Commercialization, Restructuring and Privatization of PKP and the provisions of the Employee Guarantee Package. Representatives of the Company's

employees in the Supervisory Board may only be persons who have passed an examination for candidates for members of supervisory boards in companies in which the State Treasury is the sole shareholder, persons exempt from the obligation to pass such examination in accordance with applicable laws and the holders of other equivalent qualifications.

12. A Management Board member, commercial proxy, liquidator, branch manager, plant manager or the chief accountant, a legal counsel or attorney employed by the company or a person directly reporting to a Management Board member or to a liquidator may not simultaneously be a Supervisory Board member. The rule laid down in the first sentence applies accordingly to management board members and liquidators of a subsidiary company or a subsidiary cooperative. A Supervisory Board member may not concurrently discharge an elected function or sit in the bodies of a company, inter-company or national trade union organization, a federation of trade unions or a confederation of trade unions, with the exception that the requirements set forth in this sentence are not applicable to members of the Supervisory Board of the term of office specified in § 27 Section 5 sentence two and the term of office immediately following it.”
13. A Supervisory Board member appointed in accordance with the provisions of section 3 above may also be dismissed for important reasons by the Shareholder Meeting.
14. Whereas the obligation ties connecting each Supervisory Board member with the Company constitute a unique organizational and corporate relationship aimed at exercising continuous supervision over the Company, from which relationship the Supervisory Board member’s obligation ensues to act with care and an increased measure of diligence, given the professional nature of duties performed in a supervisory body, each Supervisory Board member:
  - 1) is obligated to exercise his/her rights and perform his/her duties in person, with utmost professional care, subject to the Articles of Association and applicable provisions of law;
  - 2) cannot take any action or perform any activities that would be in contradiction to his/her duties or could raise suspicion of bias of that Management Board member or of promotion of his/her private interest;
  - 3) is obligated to keep confidential business secrets of the Company and documents conveyed to the Supervisory Board member in connection with the exercise of rights and performance of duties in the Supervisory Board and not to disclose them to other persons unless required by mandatory provisions of law.

## § 20

1. At least two Supervisory Board members elected by the Shareholder Meeting in consideration of § 21 below should satisfy: (i) the criteria of independence from the Company and entities with significant ties to the Company as described in § 21 and in Schedule II to EC Recommendation and (ii) the conditions of independence within the meaning of Article 86 sec. 5 of the Act on Statutory Auditors.
2. If the Management Board receives a written representation from a Supervisory Board member, who has previously met the criteria prescribed by section 1 above, stating that he/she no longer satisfies these criteria or receives such information from another source then, within two weeks of receipt of such a representation or obtaining such information will convene a Shareholder Meeting to appoint a Supervisory Board member who meets the criteria prescribed by section 1.

3. The parties entitled to propose candidates for Supervisory Board members, as mentioned in section 1 above, are solely the Company's shareholders who have voting rights attached to the Company's shares representing no more than 10% of all the votes in the Company.

## § 21

1. A Supervisory Board member elected using the procedure in § 20 above will satisfy the following criteria of independence:
  - 1) the person cannot be linked to the Company (except for the membership in the Supervisory Board), a person linked to the Company's controlling entity or subsidiary and with a subsidiary of the Company's controlling entity or a person linked to an entity in which the Company holds more than a 10% stake in the share capital;
  - 2) the person cannot be a relative or kin, up to the second degree of affinity, of the person mentioned in item 1) above;
  - 3) the person cannot be a relative or kin, up to the second degree of affinity, of a Company's shareholder holding more than 5% of all the votes in the Company or be such a shareholder;
  - 4) the person cannot be linked to any Company shareholder holding more than 5% of all the votes in the Company and also with such shareholder's controlling entity or subsidiary and with a subsidiary of the shareholder's controlling entity;
  - 5) the person cannot be a relative or kin, up to the second degree of affinity, of the person mentioned in item 4) above.
2. For the purposes of this paragraph, the term "linked person" means a person, who:
  - 1) sits on statutory bodies of a legal person and, in the case of a partnership, also a partner or general partner;
  - 2) remains in an employment, mandate or another relationship of similar nature with the entity, the link to which is determined. The above applies to any persons who, within the 3 years before their appointment to the Supervisory Board remained in an employment, mandate or another relationship of similar nature with the Company.
3. For the purposes of this paragraph, the controlling entity and subsidiary are understood respectively as the person who satisfies the premises in Article 4 § 1 item 4) of the Commercial Company Code.

## § 22

A Supervisory Board comprised of fewer members than it was set pursuant to § 19 section 8 above after the mandates of some Supervisory Board members expire (for reasons other than dismissal), but at least five, is capable of adopting valid resolutions.

## § 23

1. For Supervisory Board resolutions to be valid, all the Supervisory Board members must have been invited and at least half of them must be present, including the Supervisory Board Chairperson.
2. Resolutions of the Supervisory Board are adopted by an absolute majority of votes. If an equal number of votes is cast "for" and "against", the latter including abstentions, the Supervisory Board Chairman shall have the casting vote.

3. Supervisory Board resolutions in the matter of suspension of Management Board members or the Management Board require consent of the Supervisory Board Chairman.

#### **§ 24**

1. The Supervisory Board holds its meetings no less frequently than once every two months.
2. Supervisory Board members may participate in adopting Supervisory Board resolutions by voting in writing with the intermediation of another Supervisory Board member. Voting in writing cannot apply to matters introduced to the agenda at a Supervisory Board meeting.
3. The Supervisory Board may adopt resolutions by following a written procedure or by using means of direct remote communication.
4. Adoption of resolutions following the procedure specified in sections 2 and 3 does not apply to the election of the Supervisory Board Chairperson and Deputy Chairperson, the appointment of a Management Board member and the dismissal and suspension of such persons.

#### **§ 25**

1. The Supervisory Board exercises permanent supervision over the Company's operations in all areas of its activity.
2. The Supervisory Board acts on the basis of the bylaws it has adopted.
3. In addition to the matters restricted by the provisions of the Commercial Company Code and other legislative acts, powers of the Supervisory Board include:
  - 1) selecting or changing an entity authorized to audit the Company's financial statements and to conduct financial audit activities in the Company;
  - 2) giving consent for the Management Board to pay an interim dividend as an advance towards the dividend anticipated at the end of the financial year;
  - 3) appointing and dismissing the President of the Management Board and other Management Board members in the case referred to in § 14 section 3;
  - 4) appointing and dismissing the President of the Management Board on the terms set forth in § 14 section 4 and section 6 and a Management Board member from among the candidates presented by employees on the terms set forth in § 14 section 5 and section 6;
  - 5) setting the number of Management Board members;
  - 6) approving the Management Board bylaws upon request of the President of the Management Board;
  - 7) appointing and dismissing the Chairperson and Deputy Chairperson of the Supervisory Board, subject to the personal right of PKP S.A. referred to in §19 section 5;
  - 8) adopting and amending Supervisory Board bylaws;
  - 9) adopting and amending bylaws for electing employee representatives to the Supervisory Board;
  - 10) adopting and amending the Bylaws for Appointing Management Board Members;
  - 11) adopting the consolidated text of the Company's Articles of Association;



- 12) giving consent for establishing and liquidating a branch of the Company;
- 13) giving consent:
  - a) for the Company to purchase or sell or encumber with limited right in rem a real property, a perpetual usufruct right or interest in real property or a perpetual usufruct right;
  - b) for subscription to, acquisition or sale of shares in another company, except for the subscription to shares in the increased share capital of the Company's subsidiaries;
  - c) for the Company to purchase or sell a license or a copyright;
  - d) for the Company to incur liabilities and dispose of its rights;
  - e) for the Company to buy and sell fixed assets:
    - with the market value of PLN 20,000,000 (twenty million Polish zloty) or more, provided that, where agreements are concluded for a limited term, it is assumed that the value of the Company's performance is as agreed in the agreement or anticipated in the period of five years, except when the agreements are executed within the scope of the company's line of business specified in § 5 section 1 item 1 of the Articles of Association, including transportation agreements, freight forwarding agreements and agreements on the provision of comprehensive traction and maneuvering services.
- 14) giving consent for creating and liquidating special-purpose funds;
- 15) approving business plans and the Company's annual and long-term action plans;
- 16) giving consent for the Company to join economic organizations;
- 17) approving the Company's visual identity system;
- 18) giving consent for the Company to enter into an agreement with a related party within the meaning of the Finance Minister's regulation issued on the basis of Article 60 section 2 of the Act on Public Offering, where the value exceeds PLN 1,000,000 (one million Polish zloty), other than a typical agreement, concluded on an arm's length basis as part of the Company's operating activity, with a subsidiary, in which the Company holds the majority equity stake, however validity of this resolution in the matter of such a consent requires that it is approved by at least one of the Supervisory Board members satisfying the criteria of independence from the Company and from the entities with significant ties to the Company selected following the procedure of § 20 above and in consideration of § 21 above;
- 19) giving consent for the Company to enter into an agreement aimed at granting a donation or releasing from debt or any other agreement unrelated to the Company's line of business specified in these Articles of Association, with the value exceeding the PLN equivalent of EUR 5,000, calculated using the exchange rate announced by the National Bank of Poland on the date of the agreement, as long as the State Treasury, PKP S.A. or other state legal persons hold more than 50% of the Company's shares;
- 20) giving consent for the President of the Management Board or a Management Board member to take up competitive activity, in particular to handle a competitive business or participate in a competitive company as a partner in a civil law company, partnership or as a member in the body of a capital company or participate in another competitive legal person as a member of its body;
- 21) issuing opinions on motions submitted by the Management Board to the Shareholder Meeting.

## **§ 26**

1. The Supervisory Board appoints an audit committee, which consists of at least three of its members, including two Supervisory Board members meeting the independence criteria and appointed in the manner specified in § 20 and 21 above. At least one audit committee member should be qualified in accounting or financial audit.
2. The tasks of the audit committee include in particular:
  - 1) overseeing the organizational unit dealing with internal audit;
  - 2) monitoring the financial reporting process;
  - 3) monitoring the effective operation of internal control, internal audit and risk management systems,
  - 4) monitoring the performance of financial audit activities;
  - 5) monitoring whether the auditor and the entity authorized to audit financial statements are independent, including if they provide services other than financial review to the Company;
  - 6) recommending to the Supervisory Board an entity authorized to audit financial statements, to conduct a financial review of the Company.
3. The Supervisory Board appoints the nominations committee, which consists of three Supervisory Board members, of which at least one Supervisory Board Member meeting the independence criteria and appointed in the manner specified in § 20 and 21 above, who serves as the chairperson.
4. The Nomination Committee organizes and exercises ongoing supervision over the recruitment procedure to the positions of Management Board members and over the Management Board member evaluation and appointment process.
5. The Supervisory Board may also appoint other committees. The detailed tasks and the rules governing the appointment and operation of the respective committees are set forth in Supervisory Board bylaws, if adopted.

## **VIII. FINAL AND TRANSITORY PROVISIONS**

### **§ 27**

1. The personal rights granted to PKP S.A. mentioned in § 14 section 4 and in § 19 are vested always when PKP S.A. hold shares representing at least 25% of the Company's share capital.
2. In the event of liquidation of PKP S.A. and provided that the State Treasury holds shares representing at least 25% of the Company's share capital, the State Treasury will have the following personal rights:
  - 1) the right to name candidates for the President of the Management Board, within the scope specified in § 14 sec. 4;
  - 2) the right to appoint and dismiss Supervisory Board members, within the scope specified in §19 sections 2 and 9;

- 3) the right to designate the Supervisory Board Chairperson, within the scope specified in § 19. sec 5; and
  - 4) the right to set the number of Supervisory Board members, within the scope specified in § 19. sec 8.
3. In the event of an expiry or waiver of the personal rights, provisions of these Articles of Association governing the expired personal rights will be replaced by the relevant provisions of the Commercial Company Code.
  4. Subject to the provisions of this section 4, election of members for the corporate bodies following the procedure set forth in § 14, § 19 and § 20 is carried out for the first time in connection with the expiry of the mandates of the Management Board members and Supervisory Board members discharging such functions on the Registration Date, where starting from the Registration Date, the Supervisory Board members discharging such a function on that date, other than representatives of the Company's employees, are deemed to have been appointed by PKP S.A. following the procedure set forth in § 19 section 2. Within six months of the Registration Date, but no later than within two months of the first listing of the Company's shares on the main market of the Warsaw Stock Exchange, the composition of the Supervisory Board should be supplemented so that the requirements regarding the number of its members set forth in § 19 section 1 sentence 1 and § 20 section 1 are satisfied; the Management Board will convene the Shareholder Meeting for this purpose.
  5. The term of office of the Management Board members discharging the function on the Registration Date will become joint on the Registration Date and will elapse on the third anniversary of the Registration Date. The term of office of the Supervisory Board members discharging the function on the Registration Date will be extended and will elapse on the third anniversary of the Registration Date.
  6. Provisions of § 14 section 5 enter into force on the day of the first quotation of the Company's shares on the main market of the Warsaw Stock Exchange.
  7. An amendment to § 14 section 6, § 26 sections 3 or 4 or this section 7 requires a resolution of the Shareholder Meeting adopted by a majority of four-fifths of the votes in the presence of shareholders representing three-fourths of the Company's share capital.
  8. All the amounts stated in these Articles of Association are in gross amounts.

## § 28

1. The Company's financial year begins on 1 January and ends on 31 December.
2. Except for the announcement on convening the Shareholder Meeting and other announcements related to the Shareholder Meeting, the Company publishes its announcements in Monitor Sądowy i Gospodarczy. Each announcement issued by the Company should also be posted in the Company's registered office in a place accessible to employees.

## § 29

In these Articles of Association:

1. "**Registration Date**" stands for the registration date of the amendments to these Articles of Association adopted by Resolution no. 55/2013 of the Shareholder Meeting of 2 October 2013.

2. “**Civil Code**” stands for the Act of 23 April 1964 entitled the Civil Code (Journal of Laws, no. 16, item 93, as amended).
3. “**Commercial Company Code**” stands for the Act of 15 September 2000 entitled the Commercial Company Code (Journal of Laws No. 94, Item 1037, as amended).
4. „**Employee Guarantee Package**” stands for the Employee and Social Guarantee Package Agreement for employees of PKP CARGO S.A. establishments and for employees of PKP CARGO Group Companies of 2 September 2013.
5. “**Act on Commercialization, Restructuring and Privatization of PKP**” stands for the Act of 8 September 2000 on the Commercialization, Restructuring and Privatization of the State-Owned Enterprise “Polskie Koleje Państwowe” (Journal of Laws of 2000, No. 84, Item 948, as amended).
6. “**Act on Public Offering**” stands for the Act of 29 July 2006 on Public Offering and the Conditions for Floating Financial Instruments in an Organized Trading System and on Public Companies (Journal of Laws of 2009, No. 185, Item 1439, as amended).
7. “**Act on Trading**” means the Act of 29 July 2005 on Trading in Financial Instruments (Journal of Laws of 2010 No. 211 Item 1384, as amended).
8. “**Act on Competition and Consumer Protection**” stands for the Act of 16 February 2007 on Competition and Consumer Protection (Journal of Laws No. 50, Item 331, as amended).
9. “**Accounting Act**” stands for the Accounting Act of 29 September 1994 (Journal of Laws of 2009, No. 152, Item 1223, as amended).
10. “**Act on Transparency of Financial Relations**” stands for the Act of 22 September 2006 on Transparency of Financial Relations between Public Authorities and Public Enterprises and Financial Transparency of Certain Enterprises (Journal of Laws No. 191, Item 1411, as amended).
11. “**Act on Statutory Auditors**” means the Act of 7 May 2009 on statutory auditors and their self-government authority, entities authorized to audit financial statements and public supervision (Journal of Laws No. 77, Item 649, as amended).
12. “**EC Recommendation**” means the Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board (OJ.EU.L.2005.52.51).