

**Justification of draft resolutions
adopted by the Ordinary Shareholder Meeting of PKP CARGO S.A.
convened for 26 June 2019
re. amendments to the Articles of Association**

The goal of the proposed amendments to the Articles of Association of PKP CARGO S.A. (hereinafter also referred to as the “Company”) (hereinafter also referred to as the “Articles of Association”) is to adapt the provisions of the Articles of Association to PKP CARGO S.A.’s current needs and applicable law. The proposed amendments should also eliminate ambiguity in interpretation and introduce solutions prescribed by the Best Practice of WSE Listed Companies 2016. The proposed amendments should improve the quality of corporate governance in the Company and give the Company greater flexibility in adapting to the changing external situation and expectations of the Shareholders.

Below is a summary of the proposed amendments to the Articles of Association.

1. Amendment to § 12 of the Articles of Association (**proposal of the shareholder PKP S.A.**):
 - i. the amendment of § 12 sec. 2 items 5)-7) of the Articles of Association pertains to transfer of the matters defined in Article 17 sec. 1 of the Act on the Rules for Managing State Property from the powers of the Shareholder Meeting to the powers of the Supervisory Board. The possibility of making this amendment follows from Article 17 sec. 1a of the Act on the Rules for Managing State Property;
 - ii. change of item 8) to item 5) in § 12 Section 2 is of technical nature and results from deletion of the existing items 5)-7)
 - iii. deletion of § 12 sec. 3 of the Articles of Association is the consequence of transfer of the matters specified in § 12 sec. 2 items 5)-7) of the PKP CARGO S.A. Articles of Association to the Supervisory Board
 - iv. the amendment of § 12 sec. 4 and 5 of the Articles of Association results from the adaptation of Article 17 sec. 4 of the Act on the Rules for Managing State Property; change of the numbering to sec. 3 and 4 is of technical nature and is associated with deletion of sec. 3.
2. Amendment to § 14 sec. 6 (**proposal of PKP CARGO S.A.**):
 - i. Adaptation of the wording of the provision to prevailing law and reduction of the number of independent PKP CARGO S.A. Supervisory Board members (from two to one) required to amend the Bylaws for Appointing Management Board Members:

§ 14 sec. 6 item 1

“1) Management Board members (including the President of the Management Board and the Management Board member mentioned in sec. 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 Act on the Rules for Managing State Property; 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; an amendment to the Bylaws for Appointing Management Board Members requires consent of at least one Supervisory Board member who meets the

independence criteria and has been appointed following the rules set forth in § 20 and 21 below;”

- ii. correction of item 2 by deleting the phrase *“the composition and functions of which are defined in § 26 sec. 3 and 4”* since this part is redundant, repeating the provisions of § 26 sec. 4:

§ 14 sec. 6 item 2

“2) the Management Board members appointment procedure shall be carried out with participation of the nomination committee;”

- iii. abolishing the mandatory participation of a recruitment consultant in the process of appointing the Company’s Management Board members and consequently removing a portion of the provision as redundant:

§ 14 sec. 6 item 3

*“3) unless the Supervisory Board decides otherwise, the recruitment procedure for the position of a Management Board member is prepared and organized and carried out by a professional personnel consultancy company (“**Recruitment Consultant**”) selected by a resolution adopted by the Supervisory Board on the terms and conditions set forth in the Bylaws for Appointing Management Board Members;”;*

- iv. the evaluation of candidates included in the recruitment consultant’s opinion on the candidates should not be binding for the Supervisory Board of PKP CARGO S.A. (hereinafter also referred to as the “Supervisory Board”). Such evaluation is within the powers of the PKP CARGO S.A. Supervisory Board Nomination Committee and ultimately of the Supervisory Board as a body authorized to make the selection. Accordingly, § 14 sec. 6 item 4 in its current wording should be amended by removing the phrase concerning the *“favorable”* opinion about a candidate and related activities, and replacing it with a *“recommendation”* regarding the respective candidates.

§ 14 sec. 6 item 4

“4) The Recruitment Consultant taking part in the recruitment procedure shall prepare a written opinion containing at least an indication that the required criteria have been met and a recommendation for the individual candidates; in the event that none of the candidates meets the criteria required for a position of a Management Board member, the recruitment procedure will be closed without resolution and the Supervisory Board will launch a new recruitment procedure;”;

- v. after the wording of § 14 sec. 6 item 4 is changed as described in sub-item “iv” and the *“favorable opinion from the recruitment consultant”* is removed, the wording of item 5 must also be changed by removing the phrase: *“who received a favorable opinion from the recruitment consultant”* and further clarifying its wording.

§ 14 sec. 6 item 5

“5) appointment of a Management Board member is made only from among the candidates taking part in the recruitment procedure. The nomination committee will provide the Supervisory Board with a recommendation concerning the candidates taking into account information obtained in the course of the recruitment procedure;”;

- vi. limiting the obligations of the PKP CARGO S.A. Supervisory Board Nomination Committee and the Company in connection with the report on the conducted recruitment procedure:

§ 14 sec. 6 item 6

“6) the nomination committee accepts a report on the conducted recruitment procedure; the Company will make the report from the recruitment procedure available to the public, within 7 days of its acceptance, 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;”;

- vii. limiting the scope of obligations of the of the PKP CARGO S.A. Supervisory Board Nomination Committee and the Company associated with the amendment of the Bylaws for Appointing Management Board Members:

§ 14 sec. 6 item 7

“7) after each amendment of the Bylaws for Appointing Management Board Members, the nomination committee will prepare a written report with detailed information on the amendments;”;

- viii. editorial change in the wording of item 8:

§ 14 sec. 6 item 8

“8) the Company covers the costs of the recruitment procedure, including remuneration of the Recruitment Consultant;”;

The amendments proposed in § 14 sec. 6 are aimed at increasing the flexibility of the issues specified in the PKP CARGO S.A. Articles of Association regarding the process of selection of PKP CARGO S.A. Management Board Members.

The proposed amendments will modernize and bring the provisions of the Articles of Association to market standards.

The current regulation on selection of PKP CARGO S.A. Management Board Members in the part pertaining to the recruitment consultant is very restrictive and the level of its formality deviates from the market standards existing in other listed companies. Considering the weight of the Articles of Association document for a joint-stock company, detailed regulation of this issue in the Articles of Association seems to be too far-reaching. The current regulations significantly impair the flexibility and possibility of reaction to the market reality and the needs of the Company and its shareholders. The existing formal and rigid regulations in this respect seem to be contrary to the interests of both the Company and its shareholders.

One cannot find similar provisions in the articles of association of other listed companies from the WIG-20 index with a State Treasury shareholding. Other companies select management board members through the supervisory board, which defines the detailed rules and procedures when initiating the recruitment procedure.

Currently, the selection of PKP CARGO S.A. Management Board Members is, in fact, dependent on the positive decision of the recruitment consultant (see § 14 sec. 6 item 4 of the PKP CARGO S.A. Articles of Association). This limits the Supervisory Board as regards the group of candidates from which the Supervisory Board selects PKP CARGO S.A. Management Board Members. In light of the current regulation, the recruitment consultant decides which candidates will be admitted to evaluation and the group of candidates from which the Supervisory Board makes the final selection.

An external entity, the recruitment consultant, is an important participant of the process of selection of PKP CARGO S.A. Management Board Members and the process of selection of the Company's Management Board should be supported by an external advisor. However the scope of their influence on the recruitment procedure is too broad as they are not the Company's governing body and do not incur any corporate liability for the decisions they make. The liability for the process is incurred by the Supervisory Board and it is the Supervisory Board that should make the selection from among the candidates based on, among others, the recommendation of the recruitment consultant. What is important, it should be emphasized that the participation of the recruitment consultant in the process of selection of PKP CARGO S.A. Management Board Members, compared to other companies where the State Treasury holds a stake, should be assessed as positive and defining increased standards of the recruitment process - bulk of the companies do not envisage participation of a recruitment consultant in the process at all.

In addition, the amendment to § 14 sec. 6 item 1 involving substitution of the reference to the Regulation issued by the Council of Ministers on 18 March 2003 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) with a reference to the Act on the Rules for Managing State Property (Journal of Laws of 2016, Item 2259, as amended) is of technical nature. The Regulation referred to in the sentence above has been repealed by the provisions introducing the Act on the Rules for Managing State Property (Journal of Laws of 2016 Item 226, as amended).

3. Amendment to § 15 of the Articles of Association introducing two-person representation in the Company (**proposal of PKP CARGO S.A.**):
 - i. *"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 two Management Board members acting jointly or by a Management Board member acting jointly with a commercial proxy."*

The amendment is aimed at adapting the provisions of the Articles of Association to the generally accepted principle of two-person representation in big capital companies and reflect the model company representation defined in Article 373 § 1 of the Commercial Company Code.

4. Amendment to § 17 of the Articles of Association (**proposal of the shareholder PKP S.A.**):

- i. The possibility of changing the addressee of the report referred to in Article 17 sec. 6 of the Act on the Rules for Managing State Property (from the Shareholder Meeting to the Supervisory Board) results from the provisions of Article 17 sec. 6a of the Act on the Rules for Managing State Property;
 - ii. the amendment of § 17 sec. 2 of the Articles of Association involving adding an obligation to prepare the report on application of the best practices involves adaptation of the Articles of Association to the amended wording of Article 17 sec. 6 of the Act on the Rules for Managing State Property. Since the best practices referred to in Article 7 sec. 3 of the Act on the Rules for Managing State Property may pertain to companies with the participation of the State Treasury, in the proposed amendment a reservation was made: “if they apply to the Company”.
5. The amendment to § 19 sec. 2 of the Articles of Association deleting the out-of-date reference to the previously applicable Act of 7 May 2009 on Statutory Auditors and their Self-Regulatory Body and Public Oversight (Journal of Laws of 2009, No. 77 Item 649, consolidated version of 2016 Item 1000 as amended) - **(proposal of PKP CARGO S.A.):**
- i. § 19 sec. 2
„2. PKP S.A. shall be 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 shall be rounded down to the nearest integer) plus one.”;
 - ii. §19 sec. 15
„15. A Supervisory Board Member tenders his/her resignation letter in writing to the Company with a copy to the Supervisory Board Chairperson or Deputy Chairperson.”.

This is a technical amendment. Leaving the existing wording in the Articles of Association creates a reference to Article 86 sec. 5 of the Act of 11 May 2017 on Statutory Auditors, Audit Firms and Public Oversight (Journal of Laws of 2017, Item 1089), which has been repealed.

In addition, for the avoidance of doubt, it is proposed to add § 19 sec. 15 making an express reference to the manner of tendering resignations by Supervisory Board members. So far there was no such precision in the Articles of Association, which could cause doubts as to the body to which the resignation should be tendered to bring about legal effects. Due to the weight of this issue the regulation of this matter in the Articles of Association seems to be desirable.

6. Amendment to § 19 of the PKP CARGO S.A. Articles of Association **(proposal of the shareholder PKP S.A.):**
- i. the amendment to § 19 sec. 12 of the Articles of Association pertains to adaptation of the contents of Article 19 of the Act on the Rules for Managing State Property, according to which, among others, the obligation to obtain the opinion of the Supervisory Board for the companies’ matters, university education, no employment relationship with the Company, does not apply to the employees’ representatives.
 - ii. the addition of sec. 12a in § 19 of the Articles of Association pertains to adaptation of the Articles of Association to the contents of Article 20 sec. 2 of the Act on the Rules for Managing State Property, which introduces an obligation to take actions aimed at revoking a

Supervisory Board member who does not satisfy the requirements laid down in Article 19 sec. 1-3 and 5) of the Act on the Rules for Managing State Property, does not apply to the persons indicated by an entity other than a state-owned legal person.

7. Amendment to § 23 sec. 1 and 2 (**proposal of PKP CARGO S.A.**):

- i. expanding the criterion required for validity of resolutions adopted by the Supervisory Board:

§ 23 sec. 1

„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 or Deputy Chairperson.”.

The proposed amendment is aimed at increasing the flexibility of Supervisory Board meetings and enabling the Supervisory Board to make decisions in the absence of the Chairperson.

It will have positive impact on improving the efficiency and decision-making ability of the Supervisory Board. Considering that the Supervisory Board is a collective body, it seems justified to expand the situations in which it will be able to effectively adopt resolutions. Making this ability dependent on the presence of the Supervisory Board Chairperson seems to be too formal limitation. It will be beneficial to enable the Supervisory Board to adopt resolutions in situations when the Chairperson is absent, with simultaneous presence of the Supervisory Board Deputy Chairperson. The requirement to have the Supervisory Board Chairperson present at the meeting impacting the validity of the resolutions of this body is an additional safeguard that does not follow from the Commercial Company Code, and its expansion to include a Deputy Chairperson will not weaken the guarantee function of this provision.

It should be also noted that in other WIG-20 companies with the participation of the State Treasury for resolutions adopted by the Supervisory Board to be valid, the presence or the Supervisory Board Chairperson or Deputy Chairperson is required or there is no such requirement at all.

- ii. increasing the flexibility of the work of the Supervisory Board by changing the majority of votes needed for the Supervisory Board to adopt resolutions:

§ 23 sec. 2

„2. Resolutions of the Supervisory Board are adopted by a simple majority of votes. If an equal number of votes is cast “for” and “against”, the Supervisory Board Chairperson has the casting vote.”.

The possibility of making changes in this respect is permitted by the Commercial Company Code. The provisions of Article 391 § 1 sentence 1 *in fine* of the Commercial Company Code stipulates that the articles of association may lay down different rules for the majority of votes required for valid adoption of resolutions by the supervisory board. It is permitted both to introduce less restrictive requirements by stipulation that a simple majority of votes of the supervisory board members participating in the ballot is sufficient and to introduce more restrictive requirements (see: J. Szwaja, w: Sołtysiński, Szajkowski, Szumański, Szwaja, Komentarz KSH (Commercial

Company Code Commentary), vol. III, ed. 2, p. 840, Nb 11; A. Opalski, Supervisory Board in the company, p. 295).

It is justified to increase the flexibility of the decision-making by the Supervisory Board and introduce, as a rule, a simple majority of votes required to adopt a resolution.

8. Amendment to § 25 sec. 3 (**proposal of PKP CARGO S.A.**):

i. clarifying further the Supervisory Board's duties:

§ 25 sec. 3 item 5

"5) setting the number of Management Board members and setting compensation for Management Board members, subject to § 12 sec. 2 item 3;"

It is proposed to define more precisely the powers of the Supervisory Board through indicating that, in addition to setting the number of the Company's Management Board Members, the Supervisory Board's powers include also setting the remuneration for PKP CARGO S.A. Management Board Members.

ii. adapting the wording of § 25 sec. 3 item 18 of the Articles of Association to the requirements resulting from the Best Practice of WSE Listed Companies 2016 and to the Company's internal needs:

§ 25 sec. 3 item 18

"18) giving consent for the Company to enter into: (i) a material agreement with a shareholder holding at least 5% of all the votes at the Shareholder Meeting, or (ii) an agreement whose value exceeds PLN 10,000,000 (ten million Polish zloty) with a related party within the meaning of the Finance Minister's regulation issued pursuant to Article 60 sec. 2 of the Act on Public Offering, while validity of such a resolution requires that it is accepted 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.

This obligation does not apply to typical agreements 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;"

Best Practice of WSE Listed Companies 2016 in Section V.Z.5 stipulate that the management board of a company listed at the Stock Exchange should move to the supervisory board for consent for the company to enter into a material agreement with a shareholder holding at least 5% of the total number of votes at the Shareholder Meeting. The proposed amendment implements this general principle and is a standard among other WSE-listed companies.

Additionally, it is proposed to increase the amount of the liability from which it will be required to obtain the consent of the Supervisory Board for entering into agreements with a related party from PLN 1,000,000 (one million Polish zloty) to PLN 10,000,000 (ten million Polish zloty).

This change is dictated by the need resulting from the scale of the Company's current operations. The Company's turnover in 2018 exceeded PLN 3.9 billion. The existing amount of PLN 1,000,000 (one million Polish zloty) as a threshold of an agreement for which the consent of the Supervisory Board is required requires more frequent application for such consent and is incommensurably low compared to the Company's turnover. As a consequence, the Supervisory Board's consent is required for agreements of insignificant importance from the perspective of the Company's size.

- iii. removing the provision that make the Supervisory Board's powers to give consent to debt releases and donation agreements conditional upon the State Treasury, PKP S.A. or another state-owned legal person holding the position of the Company's parent:

§ 25 sec. 3 item 19

"19) giving consent:

- a) *for the Company to enter into a donation agreement or other agreement with a similar effect, the value of which is higher than PLN 20,000 (twenty thousand) or 0.1% of total assets within the meaning of the Accounting Act, determined on the basis of the most recent approved financial statements;*
- b) *to a debt release or other agreement with a similar effect, the value of which is higher than PLN 50,000 (fifty thousand) or 0.1% of total assets within the meaning of the Accounting Act, determined on the basis of the most recent approved financial statements;".*

This condition applies only to the Supervisory Board's powers in this respect (even though items 19, 19a and 22 were introduced to the Articles of Association in connection with the coming into effect of the Act on the Rules for Managing State Property, consolidated version in Journal of Laws of 2018 item 1182) and therefore it is advisable to remove it in order to unify the provisions of the Articles of Association.

In practice the powers of the Supervisory Board in this respect remain unchanged.

9. Amendment to § 25 of the PKP CARGO S.A. Articles of Association (**proposal of the shareholder PKP S.A.**):

- i. the amendment of § 25 sec. 3 items 13a)-13d) of the Articles of Association pertains to transfer of the matters defined in Article 17 sec. 1)-4) of the Act on the Rules for Managing State Property from the powers of the Shareholder Meeting (paragraph 12 sec. 3 items 5)-7) deleted by the first resolution) to the powers of the Supervisory Board and adaptation of the wording to the amended wording of this regulation. The possibility of moving the powers follows from Article 17 sec. 1a of the Act on the Rules for Managing State Property; at the same time, the existing thresholds of the Supervisory Board's powers remained unchanged, adding a pertinent reservation in § 25 sec. 3 item 13;
- ii. the amendment of § 25 sec. 3 item 19a) of the Articles of Association results from the adaptation of the wording to the amended wording of Article 17 sec. 2 of the Act on the Rules for Managing State Property;

iii. deletion of item 22) in § 25 sec. 3 of the Articles of Association is the consequence of changing the addressee of the report referred to in Article 17 sec. 6 of the Act on the Rules for Managing State Property (from the Shareholder Meeting to the Supervisory Board), which results from the provisions of Article 17 section 6a of the Act on the Rules for Managing State Property. The report will be submitted to the Supervisory Board hence there is no basis to leave the obligation to issue an opinion on the report previously submitted to the Shareholder Meeting.

10. Amendment to § 27 sec. 7 reducing the statutory requirements needed to amend § 26 sec. 3, sec. 4 and § 27 sec. 7 and removing the special majority required to amend § 14 sec. 6 (**proposal of PKP CARGO S.A.**):

§ 27 sec. 7

„7. An amendment to § 26 sec. 3 or sec. 4 or this sec. 7 requires a resolution of the Shareholder Meeting adopted by a majority of four-fifths of the votes in the presence of shareholders representing at least 50% (fifty percent) plus one of all the votes in the Company.”.

The existing regulations pertaining to amendments to the Articles of Association with regard to:

- (I) the rules of appointment of Management Board Members (Article 14 sec. 6);
 - (II) the power of the Supervisory Board to appoint the nomination committee (Article 26 sec. 3);
 - (III) the scope of activity of the Supervisory Board nomination committee (Article 26 sec. 4);
- imposing a requirement to obtain a majority of 4/5 votes with the presence of shareholders representing at least 3/4 of the share capital are very restrictive.

Such high majorities of votes are usually required for amendments of the highest importance from the perspective of the company's operations. Pursuant to Article 414 of the Commercial Company Code, as a rule, decisions are made by the Shareholder Meeting of the given company with an absolute majority of votes and a more restrictive majority is reserved for matters that are very important for the operations of the given company, for example:

Article 415 § 1 of the Commercial Company Code. A resolution on issue of convertible bonds and bonds with a priority right in subscription for shares, amendment of the articles of association, redemption of shares, reduction of the share capital, disposal of the business or an organized part thereof, and dissolution of the company is adopted with a majority of three fourths of the votes.

With the existing share capital structure, i.e. significant fragmentation of the shareholders, it is immensely difficult to gather a quorum in the range of 75% of the share capital. Suffice it to say that from the moment of floating on the Stock Exchange, the Company has not convened any Shareholder Meeting yet with such a high representation of shareholders. As a consequence, this regulation seems to cause a decision-making paralysis.

It should be noted that one cannot find similar provisions in the articles of association of other listed companies from the WIG-20 index with a direct or indirect State Treasury shareholding.

Such a high threshold for amendment of these provisions does not find any market justification and does not have influence on protection of the shareholders' interests. It only causes inflexibility in responding to the changing operating circumstances of PKP CARGO S.A. in the legal environment.

The proposed qualified majority for adoption of resolution is a sufficient security for the shareholders' interests, i.e. four-fifths of the votes in the presence of shareholders representing at least 50% (fifty percent) of the votes plus one of all the votes in the Company. Even this regulation is already more restrictive than the principle following from the Commercial Company Code, according to which the Shareholder Meeting is valid irrespective of the number of shares represented thereat (vide Article 408 § 1 of the Commercial Company Code), and adoption of a resolution requires an absolute majority of votes (vide Article 414 of the Commercial Company Code).

As regards the changes of the rules for appointment of Management Board Members, it is proposed that they can be made according to general rules, i.e. with an absolute majority of votes. Adoption of a qualified, very high majority and quorum for resolutions in this regard leads to lack of flexibility and deviates from the market standards.

Justification of the draft resolution adopted by the Ordinary Shareholder Meeting of PKP CARGO S.A. convened for 26 June 2019 re. amendments to the AWT Group Articles of Association

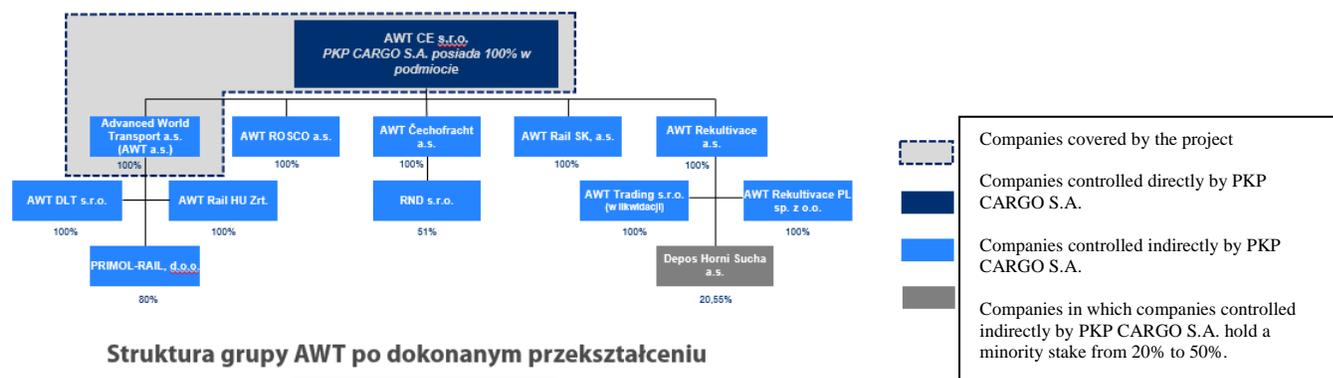
Currently AWT CE plays the role of the parent company in the AWT Group, focusing its activity on formal and legal owner supervision. The management of the entire AWT Group, in turn, in business and operational terms is executed by AWT a.s., i.e. the biggest company in the AWT Group. Hence, considering the foregoing, it should be noted that the combination of AWT CE and AWT a.s. will result in reduction of the costs of maintaining the parent company, which currently does not take an active part in the business activity of the AWT Group and hence does not create added value in the AWT Group's value chain.

As part of the combination, the share capital of AWT a.s. will not be increased and will remain on the existing level, i.e. CZK 2,053,473,000.00. This means that as a result of the combination PKP CARGO S.A. will become the holder of a 100% stake in the share capital of AWT a.s. with the par value of CZK 2,053,473,000.

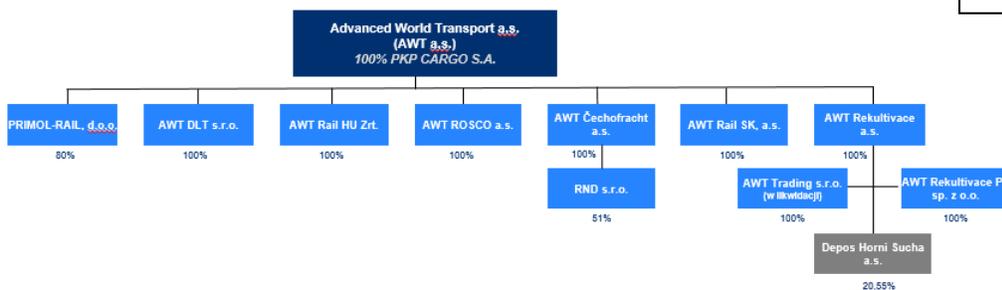
The combination of AWT CE and AWT a.s. is aligned to the broad process of reorganization / optimization of the structure of the AWT Group (and, as such, improving its profitability), launched in 2018.

Structure of the AWT Group as at 31 March 2019

Struktura grupy AWT wg stanu na 31 marca 2019 r.



Struktura grupy AWT po dokonaniu przekształceniu



Structure of the AWT Group after the transformation