

**Justification of the draft resolution
of the Extraordinary Shareholder Meeting of PKP CARGO S.A.
convened for 16 November 2020
re. amendments to the Articles of Association**

The goal of the proposed amendment 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 the Company's current needs.

§ 14 sec. 6 item 1 of the PKP CARGO S.A. Articles of Association shall be amended by:

adaptation of the wording of this provision to the applicable provisions of law and reduction of the number of independent Supervisory Board members (from two to one) required to amend the Bylaws for Appointing Management Board Members:

§ 14 sec. 6 item 1 of the PKP CARGO S.A. Articles of Association

"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 the rules and course of which are set forth in these Articles of Association and the bylaws adopted by the Supervisory Board ("Bylaws for Appointing Management Board Members") subject to the 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 the 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;"

The amendment proposed for § 14 sec. 6 item 1 of the Articles of Association of PKP CARGO S.A. is aimed at increasing the flexibility of the issues specified in the Articles of Association regarding the process of selection of PKP CARGO S.A. Management Board Members by mitigation of the criterion necessary to amend the Bylaws for Appointing Management Board Members in PKP CARGO S.A. Moreover, the proposed amendment involves 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 (consolidated text: Journal of Laws of 2020, Item 735), which amendment is of a technical nature. The Regulation referred to in the preceding sentence has been repealed by the provisions introducing the Act on the Rules for Managing State Property (Journal of Laws of 2016, Item 2260, as amended).

Justification for the draft resolutions of the Extraordinary Shareholder Meeting of PKP CARGO S.A. on amendments to the Articles of Association, as submitted by the shareholder

The amendment to § 14 sec. 6 item 1 of the PKP CARGO S.A. Articles of Association:

- is aimed at adjusting the wording of the Articles of Association of PKP CARGO S.A. to the current legal framework, in particular by deleting from the contents of the Articles of Association 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), repealed as of 1 January 2019; in place of the repealed Regulation, the pertinent provisions of the Act on the Rules for Managing State Property have been quoted;
- intends to create opportunities for streamlining and making the recruitment process for positions in the PKP CARGO S.A. Management Board more flexible; the current provisions:
 - a. in practice, prevent the adjustment of the rules for the conduct of the recruitment procedure to actual current needs in the context of the rapid changes in the market environment;
 - b. cause excessive lengthening of the recruitment process, which in the event of a vacancy (especially involving more than one Supervisory Board member) may result in a threat to the continuity of management or the need to second certain Supervisory Board member(s) to discharge a function in the Management Board;
- the requirement to obtain the consent of all Supervisory Board members meeting the independence criteria to amend the Bylaws for Appointing Management Board Members, as laid down in § 14 sec. 6 item 1 *in fine*, in the absence of a pertinent legal obligation, unreasonably confines the Supervisory Board's liberty in defining the rules for conducting the recruitment procedure and fails to reflect the shareholding structure in the Supervisory Board;

The deletion of § 14 sec. 6 items 4-7 of the PKP CARGO S.A. Articles of Association:

- is aimed at removing from the Articles of Association of PKP CARGO S.A. the detailed rules for conducting the recruitment procedure for positions in the Management Board, which rules should rather be governed by the Bylaws for Appointing Management Board Members; the laying down of the rules for conducting the recruitment procedure in the Bylaws for Appointing Management Board Members is consistent with the *Best Practice of GPW Listed Companies 2016*.
- the provisions of the Articles of Association of PKP CARGO S.A. proposed to be repealed are not based either in the applicable provisions of the Act or in the *Best Practice of GPW Listed Companies 2016*; in this context:
 - a. the scope of regulations covered by the repealed items 4-7 in sec. 6 of § 14 is governed by the Bylaws for Appointing Management Board Members adopted by the Supervisory Board;
 - b. the obligation to publish the report on the recruitment procedure, as laid down in the current wording of § 14 sec. 6 item 6, has no legal basis and diverges significantly from existing market practice;
 - c. the obligation imposed on the nomination committee to prepare a written report containing information on each and every amendment to the Bylaws for Appointing Management Board Members, as laid down in § 14 sec. 6 item 7, should be considered pointless and ineffective, because such a report – as an internal document of the Supervisory Board that is not subject to publication – is addressed only to the respective corporate authority (Supervisory Board) which adopts pertinent amendments or the Bylaws for Appointing Management Board

Members, thereby making the preparation of such a report, following the adoption of the amendments, clearly redundant and pointless in principle.

The amendment to § 26 sec. 3 of the Articles of Association of PKP CARGO S.A. involving the removal of the obligation for the Supervisory Board member who meets the independence criteria to discharge the function of chairperson of the nomination committee:

- restores the Supervisory Board's liberty in shaping the internal structure of the nomination committee, which is not restricted by statutory regulations or the *Best Practice of GPW Listed Companies 2016*, while retaining the requirement of at least one Supervisory Board member meeting the independence criteria to serve as a member of the nomination committee;
- harmonizes the proposed amendment to the provision of § 26 sec. 3 with the proposed amendments to § 14 sec. 6 of the Articles of Association of PKP CARGO S.A. discussed above;
- is consistent with the currently applicable regulations, including accounting regulations and the *Best Practice of GPW Listed Companies 2016*; it should be emphasized that the currently applicable provisions only require that the chairperson of the audit committee must meet the independence criteria.