

JUSTIFICATION FOR THE DRAFT RESOLUTIONS ON AMENDMENTS TO THE ARTICLES OF ASSOCIATION TO BE ADOPTED BY THE EXTRAORDINARY SHAREHOLDER MEETING OF PKP CARGO S.A. CONVENED FOR 17 MAY 2023

amendment to § 2 by indicating that the current content is marked as section 1, and then sections 2 and 3 are added to align the Articles of Association with a pertinent agreement entered into by PKP CARGO S.A.:

“2. The Company conducts its activity in accordance with the line of business specified in § 5, aimed at pursuing the PKP Group’s interests. The PKP Group’s interests and primary areas and directions of the PKP Group’s activity are defined in a separate agreement under which PKP S.A. carries out assignments related to the management of the corporate group, referred to as the PKP Group (hereinafter referred to as the “PKP Group Charter”).

3. The PKP Group is construed as PKP S.A. and entities that are parties to the PKP Group Charter.”

Justification:

The PKP CARGO S.A. Management Board (hereinafter also referred to as the “Management Board”) has decided to join the PKP Group Charter, which is an agreement for the management of a subsidiary. The Ordinary Shareholder Meeting of PKP CARGO S.A. approved the execution of the agreement by Resolution No. 28/2022 of 29 June 2022. The amendments to the Company’s Articles of Association proposed in this item constitute the implementation of § 17 section 2 of the agreement whereunder the Company undertook to amend the PKP CARGO S.A. Articles of Association accordingly.

amendment to § 5 section 4 of the Articles of Association by deleting a reference to an outdated statute and basing the wording of the amended section on a more universal wording of “provisions of general law”:

“4. The Company performs tasks related to the universal duty to defend and to participate in civil defense arising out of the provisions of general law. 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.”

Justification:

§ 5 section 4 of the Articles of Association contains a reference to the Act of 21 November 1967 on the Universal Duty to Defend the Republic of Poland – Journal of Laws of 2012, item 461, as amended, which was repealed on 23 April 2022 by Article 823 of the Homeland Defense Act. The proposed amendment to the Articles of Association is an alignment of its wording with the applicable provisions of law.

amendment to § 12 section 2 of the PKP CARGO S.A. Articles of Association by deleting item 5 and the resulting amendment to § 25 section 3 of the PKP CARGO S.A. Articles of Association by adding item 23 – the proposed amendment concerns the transfer of the right to select and change an audit firm from the Shareholder Meeting to the PKP CARGO S.A. Supervisory Board:

a) in § 12 section 2 of the Articles of Association, the semicolon in item 4 is replaced by a period, and item 5 is deleted:

“5) selecting or changing an audit firm to audit the Company’s financial statements and to provide additional services.”;

b) in § 25 section 3 of the Articles of Association, the period in item 22 is replaced by a semicolon, and item 23 is inserted:

“23) selecting or changing an audit firm to audit the Company’s financial statements and to provide additional services.”

Justification:

The proposed amendment consists of transferring the right to select or change an audit firm to audit the Company’s financial statements and to provide additional services from the PKP CARGO S.A. Shareholder Meeting to the PKP CARGO S.A. Supervisory Board. The proposed amendment will streamline and accelerate the process of selecting or changing an audit firm, which may be of particular significance in cases where it is necessary to change an audit firm as a result of unexpected developments, such as the loss of legally required licenses by the audit firm.

The proposed amendment is consistent with the market standard providing for the vesting of powers in the supervisory board to select and change an audit firm.

amendment to § 14 section 6 of the Articles of Association concerning the recruitment procedure for Members of the PKP CARGO S.A. Management Board:

“6. The appointment of Management Board members, including the President of the Management Board and the Management Board member referred to in section 5, is governed by the following principles and the provisions of the Act on the Rules for Managing State Property:

- 1) The Supervisory Board appoints Management Board members, in accordance with the principles laid down in the Act on the Rules for Managing State Property, after conducting a recruitment procedure the purpose of which is to verify and evaluate the qualifications of candidates;*
- 2) the recruitment procedure is conducted in accordance with the bylaws for appointing Management Board members adopted by the Supervisory Board, although prior to the initiation of the recruitment procedure for the position of a Management Board member the Supervisory Board may specify different rules to govern the recruitment procedure;*
- 3) the Management Board members appointment procedure shall be carried out with participation of the nomination committee;*
- 4) a notice of the recruitment procedure is published on the Company’s website and in a national daily paper;*
- 5) a candidate for a member of the Company’s Management Board may be a person who fulfills the requirements laid down in the applicable mandatory provisions of law.”*

Justification:

The amendment proposed for § 14 section 6 of the Articles of Association is aimed at increasing the flexibility of the issues specified in the Articles of Association regarding the organization of the process of selection of PKP CARGO S.A. Management Board Members and aligning the content of the Articles of Association with the applicable laws and market standards. It should be noted that, as of 1 January 2019, the Regulation of the Council of Ministers of 18 March 2003 on conducting the recruitment procedure for the position of management board member in certain commercial companies, which established a number of conditions and guidelines regarding the recruitment procedure for the position of management board member, was repealed, and thus the legislature itself decided that this issue should be deformed and that more liberty should be provided to the companies subject to these regulations. The PKP CARGO S.A. Supervisory Board (hereinafter also: “Supervisory Board”), acting as a collective body, is responsible for the selection of Management Board members, hence it seems appropriate to vest more powers in it in this regard. The Supervisory Board makes its decisions by a majority of votes, which is a sufficient safeguard for the Company’s interests, and thus also the interests of the shareholders in terms of the correct and effective conduct of recruitment procedures.

amendment to § 15 by indicating that the current content is marked as section 1, and then sections 2 and 3 are added to align the Articles of Association with a pertinent agreement entered into by PKP CARGO S.A.:

“2. When conducting the Company’s business, members of the Company’s Management Board are required to be guided, within their powers, by the PKP Group’s interests.

3. The Company’s Management Board is required to comply with the provisions of the PKP Group Charter when conducting the Company’s business.”

Justification:

The PKP CARGO S.A. Management Board has decided to join the PKP Group Charter, which is an agreement for the management of a subsidiary. The Ordinary Shareholder Meeting of PKP CARGO S.A. approved the execution of the agreement by Resolution No. 28/2022 of 29 June 2022. The amendments to the Company’s Articles of Association proposed in this item constitute the implementation of § 17 section 2 of the agreement whereunder the Company undertook to amend the PKP CARGO S.A. Articles of Association accordingly.

amendment to § 16 section 4 of the Articles of Association increasing the flexibility of the work of the PKP CARGO S.A. Management Board by changing the majority of votes needed for the PKP CARGO S.A. Management Board to adopt resolutions:

“4. Management Board resolutions are adopted by a simple majority of votes. If an equal number of votes is cast “for” and “against”, the President of the Management Board has the casting vote.”

Justification:

The possibility of making changes in this respect is permitted by the Commercial Company Code. The provisions of Article 371 § 2 sentence 1 in fine of the Commercial Company Code are of a supplementary nature and stipulate that the articles of association may lay down different rules for the majority of votes required for valid adoption of resolutions by the management board. It should be recognized that the requirement provided for in Article 371 § 2 sentence 1 of the Commercial Company Code may be strengthened, for instance, by setting another qualified majority or even unanimity, or it may be weakened by introducing the requirement of a simple majority of votes (thus in: “Kodeks spółek handlowych. Komentarz” [Commercial Company Code. Commentary], edited by Zbigniew Jara, 2022, edition 4, and “Kodeks spółek handlowych. Komentarz” [Commercial Company Code. Commentary] by Jacek Bieniak et al., 2022, edition 8).

In view of the Company’s interests, it seems justified to increase the flexibility of the decision-making by the PKP CARGO S.A. Management Board and introduce, as a rule, a simple majority of votes required to adopt a resolution by the Company’s Management Board.

amendment to § 16 section 10 of the Articles of Association by deleting a reference to an outdated statute and basing the wording of the amended section on a more universal wording of “provisions of general law”:

“10. Special powers of the President of the Management Board include the performance of defense tasks in the Company resulting from the regulations on the general defense obligation.”

Justification:

§ 16 section 10 of the Articles of Association contains a reference to the Act on the Universal Duty to Defend the Republic of Poland, which was repealed on 23 April 2022 by Article 823 of the Homeland Defense Act. The proposed amendment to the Articles of Association is an alignment of its wording with the applicable provisions of law.

amendment to § 17 section 1 regarding the Management Board's reporting to the Supervisory Board:

"1. The Management Board is required to submit to the Supervisory Board, at least on a quarterly basis, the information and reports referred to in Article 380¹ § 1 and 2 of the Commercial Company Code, within the dates specified by the Supervisory Board in the pertinent resolution."

Justification:

The proposed amendment is related to the amendments made in the Commercial Company Code. Because the pattern of cooperation between the Management Board and the Supervisory Board, as has been developed in recent years, works well, it seems that it does not require a different thorough regulation. However, we propose to clarify the provisions of the Articles of Association to the extent that the Management Board will be required to present the required information on a quarterly basis, on dates to be specified by the Supervisory Board in a pertinent resolution. Recently, the Company has not identified any situations that would result in an unfavorable impact on the method and scope of information flow between the Management Board and the Supervisory Board, thereby making any further regulation of this matter unnecessary.

amendment to § 23 by adding sections 4–6 as worded below in order to align the Articles of Association with the pertinent amendments to the Commercial Company Code:

“4. Meetings of the Supervisory Board are convened by the Chairperson, except that the first meeting of the Supervisory Board of a new term of office is convened by the Company’s Management Board not later than within 14 days from the date of appointment of the Supervisory Board of such new term of office; until the election of the Supervisory Board Chairperson for a new term of office, the first meeting of the Supervisory Board is chaired by the President of the Management Board.

5. If the Supervisory Board Chairperson is unable to convene a meeting, the meeting of the Supervisory Board shall be convened in accordance with the Supervisory Board Bylaws.

6. The procedure of the Supervisory Board’s operation is described in detail in the Supervisory Board Bylaws.”

Justification:

The amendments are introduced in connection with Article 389 § 2 of the Commercial Company Code, which provides the following:

“§ 2. Meetings of the supervisory board are convened by invitations which specify the date, time and place of the meeting and the proposed agenda, and the method of using means of direct remote communication during the meeting. The company’s articles of association may specify the manner and date of convening a meeting of the supervisory board.”

The Commercial Company Code leaves it to the discretion of the company to specify the manner and date of convening a meeting of the supervisory board in the company’s articles of association. At PKP CARGO S.A., these issues have to date been governed by the Bylaws of the PKP CARGO S.A. Supervisory Board. Because the Commercial Company Code allows these issues to be governed only (outside the statute) at the level of the articles of association, it is necessary to transfer and adapt the solutions developed by the Company in this matter from the Bylaws of the PKP CARGO S.A. Supervisory Board to the Articles of Association.

amendment to § 24 to align the Articles of Association with a pertinent agreement entered into by PKP CARGO S.A. by adding sections 4 and 5 reading as follows:

“4. When performing their duties, Supervisory Board members are required to take into account the PKP Group’s interests.

5. The Supervisory Board is required to comply with the provisions of the PKP Group Charter when performing its duties.”

Justification:

The PKP CARGO S.A. Management Board has decided to join the PKP Group Charter, which is an agreement for the management of a subsidiary. The Ordinary Shareholder Meeting of PKP CARGO S.A. approved the execution of the agreement by Resolution No. 28/2022 of 29 June 2022. The amendments to the Articles of Association proposed in this item constitute the implementation of § 17 section 2 of the agreement whereunder the Company undertook to amend the PKP CARGO S.A. Articles of Association accordingly.

amendment to § 25 section 3 item 18 of the Articles of Association by allowing the Company to enter into the following agreements independently of the consent of the Supervisory Board's independent members: (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(2) of the Act on Public Offering:

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(2) of the Act on Public Offering. 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;”

Justification:

The amendment proposed for § 25 section 3 item 18 of the Articles of Association is aimed at increasing the flexibility of the issues specified in the Articles of Association regarding the Supervisory Board's consent to the execution of agreements by the Company with two specified groups of counterparties by relaxing the criterion necessary for the PKP CARGO S.A. Supervisory Board to adopt the said resolution. The Supervisory Board is a collective body making its decisions by a majority of votes, which is a sufficient safeguard for the Company's interests, and thus also the interests of the shareholders. Moreover, the Company enables the Supervisory Board to make use of professional and independent advisory services, which, in the Supervisory Board's opinion, are or may be necessary for its effective exercise of supervision in the Company, including the assessment of the possible consequences of any transaction.

amendment to § 26 section 3 of the Articles of Association by providing the Supervisory Board with more liberty in shaping the composition of the Supervisory Board Nomination Committee, i.e. the provision in the Articles of Association that the Nomination Committee consists of “at least 3 Supervisory Board members”:

“3. The Supervisory Board appoints the nominations committee, which consists of at least 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.”

Justification:

The amendment proposed for § 26 section 3 of the Articles of Association is aimed at increasing the flexibility of the issues specified in the Articles of Association regarding the composition of the Supervisory Board Nomination Committee. The proposed amendment results in the Supervisory Board taking over the burden of determining the number of members of the Supervisory Board Nomination Committee. The Supervisory Board, as the body exercising ongoing supervision over the Company’s operations, knows best the scope of duties and the intensity of work of any Supervisory Board committee, and thus it should be permitted to shape the composition of this committee in a more flexible manner. The proposed amendment also unifies the rules for determining the number of members in the committees of the Company’s Supervisory Board – as regards their composition, other committees of the Supervisory Board are defined by the phrase: “at least three members”.

amendment to § 29 section 2 of the Articles of Association regarding definition updates by generalizing the definition of the phrase “Best Practice of GPW Listed Companies” used in the Articles of Association:

“2. “Best Practice of GPW Listed Companies” means the set of corporate governance rules for companies listed on the Warsaw Stock Exchange, applicable pursuant to a resolution adopted by the Council of the Warsaw Stock Exchange.”

Justification:

The proposed amendment is related to an in-depth modification of the collection of corporate governance rules applicable to companies listed on the WSE Main Market.

On 29 March 2021, the WSE Supervisory Board adopted Resolution No. 13/1834/2021 on the adoption of the “Best Practice of GPW Listed Companies 2021” (“Code of Best Practice” or “Best Practices”). The new rules entered into force on 1 July 2021. Accordingly, it is reasonable to update the wording of the Articles of Association in terms of definitions of the terms used and to generalize the definition of the phrase “Best Practice of GPW Listed Companies” so that any future amendments to the collection of corporate governance rules for listed companies do not result in the need to amend the Articles of Association in this respect.

amendment to § 29 section 14 of the Articles of Association regarding definition updates:

*“14. **Act on the Rules for Managing State Property**” shall mean the Act on the Rules for Managing State Property of 16 December 2016 (Journal of Laws of 2016, item 2259, as amended).”*

Justification:

The proposed amendment is a technical amendment whereby the words “as amended” are added at the end of the definition, so that a potential amendment to the Act on the Rules for Managing State Property does not cause doubts as to which text of the Act must be applied, because the one applicable will be the most up-to-date wording of the Act.

Justification to the draft resolution submitted by the Shareholder on April 26, 2023.
to Item 6 of the agenda of the Extraordinary General Meeting of PKP CARGO S.A.

changes in § 14 sec. 1 of the Company's Articles of Association:

“1. The Management Board consists of one to five members, including the President of the Management Board, appointed by joint term of three full financial years. The Supervisory Board may entrust member of the Management Board to perform the function of Vice-President of the Management Board.”

Justification for the draft resolution to be adopted:

The amendment to § 14 section 1 of the Company's Articles of Association is aimed at a structural stabilization of management functions, in particular in cases of a temporary inability by the President of the Management Board to perform his or her duties, and to strengthen the management continuity in the event of changes in the position of President of the Management Board.

The proposed amendment aims to mitigate the risks associated with the situations described above and will also contribute to strengthening the relationship between the Management Board members.

Moreover, the proposed amendment is aimed at clarifying the method applied to calculate the term of office of Management Board members by adopting wording that is literally consistent with the wording of Article 369 § 1 of the Commercial Company Code (after the amendments introduced by the Act of 9 February 2022 amending the Commercial Company Code and Certain Other Acts).