

## **Justification for the draft resolutions to be adopted by the Extraordinary Shareholder Meeting of PKP CARGO S.A. convened for 16 January 2019**

The goal of the proposed amendments to the Articles of Association of PKP CARGO S.A. (hereinafter also the "Articles of Association") is to adapt the provisions of the Articles of Association to the Company's current needs and the applicable law and are particularly related to the coming into effect, on 21 June 2017 of the Act of 11 May 2017 on statutory auditors, audit firms and public oversight (Journal of Laws of 2017, Item 1089, as amended) (hereinafter also the "Act"). The proposed amendments should also eliminate ambiguity in interpretation, introduce solutions prescribed by the Best Practice of GPW Listed Companies 2016 and incorporate the comments submitted by the Nomination Committee of the PKP CARGO S.A. Supervisory Board. 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, the Company presents the summary of the proposed amendments to the Articles of Association.

1. Update of the wording of § 6 section 1 item 3) of the Articles of Association by indicating that C series shares are currently bearer shares. This is a technical amendment.
2. The amendment to § 12 section 2 adds item 8 by transferring the wording of § 25 section 3 item 1, where such item 1 is subsequently removed. This amendment will transfer the powers to select an audit firm from the powers of the Company's Supervisory Board to the powers of the Company's Shareholder Meeting, thus reverting to the regulation in art. 66 sec. 4 of the Accounting Act of 30 January 2018 (Journal of Laws of 2018, Item 395) in conjunction with art. 395 § 2 sec. 1 of the Commercial Company Code Act of 20 July 2017 (Journal of Laws of 2017, Item 1577). Also, in connection with the new concepts introduced by the Act, the phrase "*entity authorized*" was changed to "*audit firm*".

*§12 sec. 2 item 8*

*"8) selecting or changing an audit firm to audit the Company's financial statements and to provide additional services."*

3. Update of the wording of § 14 sec. 5 and addition of § 14 sec. 3a and 12 of the Articles of Association:
  - i. in order to specify explicitly that management services contracts with Management Board members are signed by a Supervisory Board member appointed by a Supervisory Board resolution or by an attorney-in-fact appointed by a Shareholder Meeting resolution:

*§ 14 sec. 3a*

*"3a. The contract with a Management Board member shall be signed by a Supervisory Board member authorized by a Supervisory Board resolution or an attorney-in-fact appointed by a Shareholder Meeting resolution, on the terms and conditions set forth in such resolution."*

- ii. in connection with the change in the definition in § 29 item 6 introduced during the previous round of amendments of the Articles of Association, § 14 sec. 5 of the Articles of Association must also be updated, while removing the existing redundancy (see § 14 sec. 6 item 1):

§14 sec. 5;

*“5. The Supervisory Board will elect 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. Failure to appoint a representative of employees to the Management Board shall not preclude the appointment of the Management Board or its effective adoption of 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 and Restructuring of PKP and the provisions of the Employee Guarantee Package.”;*

- iii. in order to specify explicitly the manner in which Management Board members tender resignations:

§14 sec. 12

*“12.A Management Board Member tenders his/her resignation letter in writing to the Company with a copy to the Supervisory Board Chairperson or Deputy Chairperson.”.*

#### 4. Amendment to § 14 sec. 6:

- i. in order to reduce 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

*“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 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); 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;”*

- ii. in order to correct 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 nominations committee;”*

- iii. in order to abolish the mandatory participation of a Recruitment Consultant in the process of appointing Management Board members and consequently to remove 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. in order to introduce a rule that 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. Such evaluation is within the powers of the Nomination Committee and ultimately of the Supervisory Board as a body authorized to make the selection. Accordingly, § 14 sec. 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. in order to limit the obligations of the nominations committee and the Company in connection with the report on the conducted recruitment procedure:

§ 14 sec. 6 item 6

*“6)the nominations 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. in order to limit the obligations of the nominations 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 nominations 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;"*;

- ix. a new item 9 is added to clarify further the function of the Bylaws for Appointing Management Board Members and tidy up the structure of the Articles of Association, while references to the Bylaws for Appointing Management Board Members are removed from two other provisions of the Articles of Association:

§ 14 sec. 6 item 9

*"9) subject to the provisions of the Articles of Association, detailed rules governing the recruitment procedure for the position of a Management Board member are defined in the Bylaws for Appointing Management Board Members."*

5. Amendment to § 16 sec. 3:

- i. item 2 of the Articles of Association is amended and item 2a is added, abolishing the obligation to obtain the Management Board's consent to establish security interests other than mortgages and pledges, if the value of such security interest does not exceed PLN 50,000:

§ 16 sec. 3 item 2 and 2a

*"2) establishing mortgages and pledges;*

*2a) establishing security interest other than specified in item 2 with value exceeding PLN 50,000;"*;

- ii. item 4 is clarified by adding the obligation to obtain the Management Board's consent in the form of a resolution to accept bills of exchange:

§ 16 sec. 3 item 4

*"4) issuing, accepting, guaranteeing or endorsing bills of exchange;"*;

6. Amendment to § 19 sec. 2 of the Articles of Association removing an outdated reference (to the previous act on statutory auditors) and addition of sec. 15 explicitly describing the manner in which Supervisory Board members tender resignations:

- 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.”.*

7. Amendment to § 20 sec. 1 and sec. 2:

- i. updating the reference to the Act and adding a reference to the Best Practice of GPW Listed Companies:

§ 20 sec. 1

*“1. At least two Supervisory Board members elected by the Shareholder Meeting should satisfy the criteria of independence from the Company and entities with significant ties to the Company as described in:*

- 1) *§ 21 of the Articles of Association;*
- 2) *Schedule II to EC Recommendation;*
- 3) *Best Practice of GPW Listed Companies;*
- 4) *The Act on Statutory Auditors.”.*

- ii. supplementing and clarifying the provisions of § 20 sec. 2 of the Articles of Association in such a way that independent Supervisory Board members submit to the Company representations confirming that they have fulfilled the independence criteria and are obligated to inform the Company if such criteria are no longer fulfilled.

§ 20 sec. 2

*“2. Candidates for independent members of the Supervisory Board will submit to the Company a written representation on fulfilling the independence criteria prescribed by section 1. A Supervisory Board member shall inform the Company immediately of non-compliance with any of the independence criteria. Within two weeks of obtaining information on non-compliance with an independence criterion by an independent Supervisory Board member, the Management Board will convene a Shareholder Meeting to amend the composition of the Supervisory Board.”.*

8. Amendment to § 23 sec. 1 and sec. 2:

- i. expanding the criterion required to ensure 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.”.*

- ii. in order to make the work of the Supervisory Board more flexible, 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."*

9. Amendment to § 25 sec. 3:

i. § 25 sec. 3 item 1 is removed, which is a consequence of the amendment described in item 2 of this Justification. The amendment will transfer powers to select an audit firm from the Company's Supervisory Board to the Shareholder Meeting.

ii. 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;"*

iii. adapting the wording of § 25 sec. 3 item 18 of the Articles of Association to the requirements resulting from the Best Practice of GPW 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 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;"*

iv. removing the provisions 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 legal person holding the position of the Company's parent. This condition applies to the Supervisory Board's powers in this respect only (even though item 19s, 19a and 22 were introduced to the Articles of Association of PKP CARGO S.A. in connection with the coming into effect of the Act on the Rules for Managing State Property, i.e. 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:

§ 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 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 or 0.1% of total assets within the meaning of the Accounting Act, determined on the basis of the most recent approved financial statements;”*.

10. Adaptation of the wording of § 26 sec. 1 and sec. 2 of the Articles of Association to the requirements prescribed by the Act, where only some of the amendments required by the Act were introduced to § 26 sec. 2. The remaining requirements imposed by the Act will be introduced in the Bylaws of the Company’s Supervisory Board. Moreover, in sec. 2 item 1, the word “*organizational*” is removed from the phrase “*organizational unit*” in order to unify the wording with the Company’s internal acts and the existing structure and naming conventions.

i. § 26 sec. 1

*„1. The Supervisory Board, taking account of the provisions of 20 and § 21, will appoint an audit committee consisting of at least three Supervisory Board members, provided that the majority of the audit committee members, including its chairperson, meet the independence criteria, and:*

*1) at least one member of the audit committee has the knowledge and skills in the area of accounting or auditing of financial statements;*

*and*

*2) at least one member of the audit committee has the knowledge and skills in the specific industry in which the Company operates or the various members of the audit committee have, in specific areas, knowledge and skills pertaining to this industry.”*.

ii. § 26 sec. 2

*“2. The tasks of the audit committee include in particular:*

- 1) overseeing the unit dealing with internal audit;*
- 2) monitoring the financial reporting process;*
- 3) monitoring the effective operation of internal control systems, risk management systems and internal audit, among others with regard to financial reporting;*
- 4) monitoring the performance of financial audit activities;*
- 5) verifying and monitoring independence of the statutory auditor and the audit firm, including with respect to the provision of non-audit services to the Company by the audit firm;*
- 6) presenting a recommendation to the Shareholder Meeting of an audit firm in accordance with the policies in place in the Company;*
- 7) evaluating the independence of a statutory auditor and giving consent for the provision of permitted non-audit services by the statutory auditor;”*.

11. 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. The Company sees no purpose in maintaining such a high threshold required to amend those provisions of the Articles of Association and believes that a change in this respect will give the Company more flexibility in adapting to the changing external conditions and to the Shareholders’ expectations

§ 27 sec. 7

*“7. An amendment to § 26 section 3 or section 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 at least 50% (fifty percent) plus one of all the votes in the Company.”.*

12. Introduction of the new item 2 in § 29 will change the numbering of items in § 29 (the current items 2-13 will be subsequently numbered 3-14) in order to define the document that is referred to as the Best Practice of WSE Listed Companies in the provisions implemented in the Articles of Association:

*“2. Best Practice of GPW Listed Companies” means a collection of practices introduced by the Warsaw Stock Exchange by the power of resolution No. 26/1413/2015 of the Board of the Warsaw Stock Exchange (Giełda Papierów Wartościowych w Warszawie S.A.) of 13 October 2015.”.*

13. Adaptation of the wording of the current § 29 item 11 of the Articles of Association to the wording of the Act.

§ 29 item 12

*“12. “Act on Statutory Auditors” means the Act of 11 May 2017 on statutory auditors, audit firms and public oversight (Journal of Laws of 2017, Item 1089, as amended).”.*