

Draft resolutions submitted by the Company's shareholder on matters introduced to the agenda of the ESM to be held on 29 September 2015 and intended amendments to the Articles of Association

Current Report No. 46/2015 of 15 September 2015

Legal grounds (selected in ESPI):

Article 56 Section 1 Item 2 of the Act on Offering - current and periodic information

The Management Board of the Company under the business name of "PKP CARGO S.A." with registered office in Warsaw ("Company") hereby reports that it has received a notification by the Company's shareholder ("Shareholder"), pursuant to Article 401 § 4 of the Commercial Companies Code ("CCC"), of the draft resolutions related to the matters on the amended agenda of the Extraordinary Shareholder Meeting of the Company convened for 29 September 2015 ("ESM"):

1. concerning item 8: "Adopt a resolution on amending § 14 of the Company's Articles of Association.", and
2. concerning item 9: "Adopt a resolution on amending § 19 of the Company's Articles of Association".

Draft resolutions concerning the matters specified in the above-mentioned items of the ESM agenda, which incorporate the Shareholder's request, constitute attachment hereto.

The agenda of the ESM published in the annex No. 1 to the current report No. 45/2015 of 11 September 2015 remains unchanged.

According to the Shareholders' demand, the previous § 14 sec. 1 – 5 of the Company's Articles of Association, which read as follows:

- "1. The Management Board shall be 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 shall be 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 powers to select the candidates for the President of the Management Board on its own. The personal powers referred to in the preceding sentence shall be performed by way of delivering a written statement to the Supervisory Board Chairperson.*
- 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. The bylaws for electing candidates for a representative of employees in*

the Management Board shall be adopted by the Supervisory Board. 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.”

shall read as follows:

- “1. The Management Board shall be 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 shall be 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 powers to select the candidates for the President of the Management Board on its own. The personal powers referred to in the preceding sentence shall be performed by way of delivering a written statement to the Supervisory Board Chairperson.*
- 5. The Supervisory Board will elect one Management Board member from among the candidates submitted by the Company’s employees. A candidate should have completed master’s degree studies or equivalent higher education, have 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 shall be adopted by the Supervisory Board. 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, Restructuring and Privatization of PKP and the provisions of the Employee Guarantee Package.”*

According to the Shareholders’ demand, the previous § 14 sec. 7 – 10 of the Company’s Articles of Association, which read as follows:

- “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 need 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. The power referred to in section 5 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.”*

shall read as follows:

- “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 need 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.”*

According to the Shareholders’ demand, in § 14 after sec. 10, sec. 11 is added, which read as follows:

- “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 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.”*

According to the Shareholders’ demand, the previous § 19 of the Company’s Articles of Association, which reads as follows:

- “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 shall be appointed and dismissed by the Shareholder Meeting.*
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. 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 Auditors and be qualified in accounting or auditing.*
3. *The Company’s employees shall be entitled to appoint and dismiss their three representatives to the Supervisory Board. The bylaws for electing employee representatives to the Supervisory Board shall be adopted by the Supervisory Board. Failure to elect the Supervisory Board members representing the employees shall not preclude the appointment of the Supervisory Board or its effective adoption of resolutions.*

4. *Subject to section 5 below, the Supervisory Board shall elect the Chairperson and the Deputy Chairperson of the Supervisory Board from among its members.*
5. *PKP S.A. shall have a personal power 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 Companies 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 shall elect the Chairperson of the Supervisory Board from among its members .*
6. *The personal powers mentioned above in section 2 and section 5 shall be performed by way of delivering a written statement to the Company about the appointment or dismissal of a given Supervisory Board member or about selecting the Supervisory Board Chairperson.*
7. *The term of office of Supervisory Board members is three years.*
8. *The number of Supervisory Board members shall be 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 Companies Code (in which case the Supervisory Board may be composed of between five and thirteen members). The personal powers referred to in the preceding sentence shall be 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 Companies Code, PKP S.A. shall be entitled to a personal power to appoint one new Supervisory Board member in his/her place. The other Supervisory Board members shall be appointed by the Shareholder Meeting.*
10. *In the event of the dismissal of a Supervisory Board member appointed from among persons elected by the employees during the term of office, until such vacancy in the position of a Supervisory Board member elected by the employees is filled, resolutions adopted by the Supervisory Board shall be valid provided that the Supervisory Board is composed of at least five members.*
11. *The granting of the power referred to in section 3 above to the Company's employees was effected in conjunction with Article 4 Section 4 of the Act on Commercialization, Restructuring and Privatization of PKP and the provisions of the Employee Guarantee Package.*
12. *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.*
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.”*

shall read as follows:

- “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 shall be appointed and dismissed by the Shareholder Meeting.*
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. 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 Auditors and be qualified in accounting or auditing.

- 3. The Company's employees shall be entitled to appoint and dismiss their three representatives to the Supervisory Board. The bylaws for electing employee representatives to the Supervisory Board shall be adopted by the Supervisory Board. Failure to elect the Supervisory Board members representing the employees shall not preclude the appointment of the Supervisory Board or its effective adoption of resolutions.*
- 4. Subject to section 5 below, the Supervisory Board shall elect the Chairperson and the Deputy Chairperson of the Supervisory Board from among its members.*
- 5. PKP S.A. shall have a personal power 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 Companies 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 shall elect the Chairperson of the Supervisory Board from among its members .*
- 6. The personal powers mentioned above in section 2 and section 5 shall be performed by way of delivering a written statement to the Company about the appointment or dismissal of a given Supervisory Board member or about selecting the Supervisory Board Chairperson.*
- 7. The term of office of Supervisory Board members is three years.*
- 8. The number of Supervisory Board members shall be 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 Companies Code (in which case the Supervisory Board may be composed of between five and thirteen members). The personal powers referred to in the preceding sentence shall be 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 Companies Code, PKP S.A. shall be entitled to a personal power to appoint one new Supervisory Board member in his/her place. The other Supervisory Board members shall be appointed by the Shareholder Meeting.*
- 10. In the event of the dismissal of a Supervisory Board member appointed from among persons elected by the employees during the term of office, until such vacancy in the position of a Supervisory Board member elected by the employees is filled, resolutions adopted by the Supervisory Board shall be valid provided that the Supervisory Board is composed of at least five members.*
- 11. The granting of the power referred to in section 3 above to the Company's employees was effected in conjunction 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 shall apply accordingly to management board members and liquidators of a subsidiary company or cooperative. A Supervisory 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.

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) *should have higher education;*
 - 2) *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;*
 - 3) *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 Supervisory Board member or of promotion of his/her private interest;*
 - 4) *is obligated to keep confidential all information 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.*
15. *The requirement referred to in § 14 item 1) above shall apply only to the members of the Supervisory Board appointed to the Supervisory Board after the date of registration of amendments to the Articles of Associations adopted by the Resolution No. [...] / 2015 of the Extraordinary General Meeting of Shareholders of 29 September 2015."*

The Management Board of the Company reiterates that are also being proposed amendments to the Company's Articles of Association presented by the Management Board of PKP CARGO and Company's shareholder, announced in current reports No. 44/2015 dated 2 September 2015 and No. 45/2015 of 11 September 2015.

Legal basis:

§ 38 Sec. 1 Items 5) and 2) of the Regulation issued by the Minister of Finance on 19 February 2009 on the Current and Periodic Information Transmitted by Securities Issuers and the Conditions for Recognizing the Information Required by the Regulations of a Non-Member State as Equivalent.