



Information on the proposed amendments to the Company Statutes as put forward by the State Treasury acting in the capacity of a shareholder

On 29 May 2017 the Company received a letter from the State Treasury acting in the capacity of a shareholder in which, pursuant to Article 401 § 1 of the Commercial Companies Code, a request was made that the agenda of the nearest Ordinary General Meeting of PGE Polska Grupa Energetyczna S.A. include, among other things, an item concerning the adoption of a resolution on amendments to the Company Statutes.

The said letter proposed that the Company Statutes be amended as follows:

1. The following present wording of § 11 clause 9 of the Company Statutes:

“9. Each shareholder who intends to participate in the General Meeting, directly or by proxy, shall be obliged, without a separate call referred to in clause 10 below, to notify the Management Board or the Chairperson of the General Meeting of the fact that he holds, directly or indirectly, more than 10% (ten percent) of the total number of votes in the Company.”

is to be replaced as follows:

“9. Each shareholder who intends to participate in the General Meeting, directly or by proxy, shall be obliged, without a separate call referred to in clause 10 below, to notify the Management Board or the Chairperson of the General Meeting of the fact that he holds, directly or indirectly, more than 10% (ten percent) of the total number of votes in the Company. The above obligation shall not apply to shareholders specified in § 46 clause 1.”

2. In § 15, clauses 3 and 4 are added with the following wording:

- “3. A candidate for a member of the Management Board shall meet jointly the following conditions:*
- 1) a candidate has higher education or higher education acquired abroad and recognized in the Republic of Poland on the basis of separate regulations,*
 - 2) a candidate has at least a five years’ period of employment on the basis of an employment agreement, appointment, selection, nomination, a cooperative employment agreement, or providing services on the basis of other agreements, or conducting business activities in the capacity of a self-employed entrepreneur,*
 - 3) a candidate has at least three years’ experience of working at managerial or independent positions, or experience resulting from business activities conducted in the capacity of a self-employed entrepreneur,*
 - 4) a candidate meets requirements other than these specified in items 1–3, specified in separate regulations, in particular, a candidate does not breach any restrictions or prohibitions related to the holding of a position of a member of a governing body in commercial companies.*
- 4. A candidate for a member of the Management Board shall not meet any of the following conditions:*
- 1) a candidate holds a position of a social coworker or is employed in an office of a Member of the Parliament, a Member of the Senate or a Member of the European Parliament on the basis of an employment agreement or performs work on the basis of*

- a contract of mandate or any other contract of a similar character,*
- 2) *a candidate is a member of a political party's body representing a political party and authorized to incur liabilities,*
 - 3) *a candidate is employed by a political party on the basis of an employment agreement or performs work on the basis of a contract of mandate or any other contract of a similar character,*
 - 4) *a candidate holds an elective position in a trade union functioning in the company or a trade union functioning in a company belonging to the capital group,*
 - 5) *a candidate's social or business activities are in conflict with the interests of the company.”*

3. In § 16, clause 4 is added with the following wording:

- “4. The Supervisory Board shall appoint a Member of the Management Board after conducting a recruitment procedure whose objective is to check and assess candidates’ qualifications and to choose the best candidate for a Member of the Management Board.*
- 1) *The Supervisory Board shall conduct a recruitment procedure in the event of circumstances justifying the appointment of a Member of the Management Board.*
 - 2) *Initiating a recruitment procedure for the position of a Member of the Management Board, the Supervisory Board shall determine, by way of a resolution, the detailed principles and rules of such a procedure, in particular: the position being the subject matter of the procedure, the date and place of submitting applications, the date and place of conducting interviews, the scope of issues to be discussed in interviews, the requirements and the method of assessing candidates.*
 - 3) *A candidate for a Member of the Management Board shall meet the requirements specified in Article 22 of the Act on the Management of State-owned Property.*
 - 4) *An announcement about a recruitment procedure shall be published on the Company’s website and in the Public Information Bulletin of the Ministry of Energy.*
 - 5) *The deadline for the submission of applications may not be shorter than 14 days from the date of the publication of an announcement about a recruitment procedure.*
 - 6) *The Supervisory Board shall inform shareholders about the results of a recruitment procedure and shall provide them with the minutes of a recruitment procedure.”*

4. The following present wording of § 18 clause 1 item 6) of the Company Statutes:

- “6) providing opinions on the principles of conducting sponsoring activities,”*

is to be replaced as follows:

- “6) providing opinions on the principles of conducting sponsoring activities and assessing the effectiveness of sponsoring activities conducted by the Company.”*

5. § 18 clause 1 item 12) becomes item 15) and new items 12)-14) are added with the following wording:

- “12) providing opinions on the Management Board's reports on representation expenses, expenses on legal services, marketing services, public relations services and social communication services, as well as management consultancy services,*



- 13) *providing opinions on changes in the principles of the disposal of non-current assets specified in § 41¹,*
- 14) *approving the remuneration policy for the capital group,”*

6. The following present wording of § 18 clause 2 item 1) of the Company Statutes:

“2. The competence of the Supervisory Board shall also include giving consent to the following:

- 1) *the Company's acquisition or disposal of the following components of assets:*
 - a) *real property, perpetual usufruct, or interests in real property or perpetual usufruct,*
 - b) *components of the Company's tangible assets other than real property,*
 - c) *shares, interests or other participation rights,*
- whose value is equal to or higher than 5,000,000 euros,”*

is to be replaced as follows:

“2. The competence of the Supervisory Board shall also include giving consent to the following:

- 1) *the Company's acquisition or disposal of the following components of assets:*
 - a) *real property, perpetual usufruct, or interests in real property or perpetual usufruct,*
 - b) *components of the Company's tangible assets other than real property,*
 - c) *shares, interests or other participation rights,*
- whose value is equal to or higher than 5,000,000 euros, subject to § 37 clause 3,”*

7. The following present wording of § 18 clause 2 item 3) of the Company Statutes:

“3) the Company's entering into the following agreements:

- a) *agreements providing for donations or debt releases whose value equals at least 5,000 euros,*
- b) *agreements not related to the Company's business activities specified in § 3 clause 1 of the Statutes whose value equals at least 5,000 euros,”*

is to be replaced as follows:

“3) the Company's entering into the following agreements:

- a) *agreements providing for donations or debt releases or other agreement with similar consequences whose value exceeds 20,000 zlotys or 0.1% of the total assets within the meaning of the Accounting Act of 29 September 1994 established on the basis of the latest approved financial statements,*
- b) *agreements not related to the Company's business activities specified in § 3 clause 1 of the Statutes whose value equals at least 20,000 zlotys,*
- c) *agreements for the provision of legal services, public relations services, social communication services and management consultancy services if the value of planned combined remuneration for provided services exceeds the net amount of 500,000 zlotys per year,*

- d) *changes in agreements for the provision of legal services, public relations services, social communication services and management consultancy services if such changes increase the amount of remuneration above the amount referred to in letter c,*
- e) *agreements for the provision of legal services, public relations services, social communication services and management consultancy services which do not provide for the maximum amount of remuneration”.*

8. In § 18 clause 2, item 13) is added with the following wording:

“13) the manner of exercising the voting right by a representative of PGE Polska Grupa Energetyczna S.A. at General Meetings of companies for which the Company is the parent company within the meaning of Article 4 item 3 of the Competition and Consumer Protection Act of 16 February 2007 (Journal of Laws of 2017, item 229), in the following matters:

- a) *the establishment of another company by a company,*
- b) *changes in a company's statutes, articles of association or objects,*
- c) *a company's merger, transformation, demerger, dissolution or liquidation,*
- d) *an increase or decrease in a company's share capital,*
- e) *the disposal or lease of a company's undertaking or its organized part, or the establishment of a limited property right thereon,*
- f) *the redemption of shares or interests,*
- g) *the determination of remuneration for members of management boards and supervisory boards,*
- h) *decisions with respect to claims for compensation of damage caused in connection with the establishment of a company and the fulfilment of managerial and supervisory duties,*
- i) *matters referred to in Article 17 of the Act on the Management of State-owned Property of 16 December 2016 (Journal of Laws of 2016, item 2259), subject to § 42 item 8.”*

9. The following present wording of § 37 clause 2 of the Company Statutes:

“2. Purchase or disposal of real property, perpetual usufruct or interest in real property shall not require a resolution adopted by the General Meeting.”

is to be replaced as follows:

“2. Purchase or disposal of real property, perpetual usufruct or interests in real property or perpetual usufruct shall not require the consent of the General Meeting, subject to clause 3 items 1 and 2.”

10. In § 35, clause 3 is added with the following wording:

“3. The consent of the General Meeting shall be required for the following:

- 1) *disposing of the components of non-current assets within the meaning of the Accounting Act of 29 September 1994, classified as intangible assets, fixed assets or long-term investments, including their use as a contribution to a company or cooperative, if the market value of such components exceeds 5% of the total assets within the meaning of the Accounting Act of 29 September 1994 established on the basis of the latest approved financial statements, as well as making such components available for use by another entity for a period longer than 180 days in a calendar year, on the basis of a legal act, if the market value of the subject of a legal act exceeds 5% of the total assets, with the proviso that making an asset available for use in the case of:*



- a) *rental agreements, lease agreements and other agreements providing for making an asset available for use by other entities - the market value of the subject of a legal act shall be understood as the value of benefits for:*
 - *one year - if an asset is made available for use on the basis of agreements entered into for an indefinite period of time,*
 - *the whole term of an agreement - for agreements entered into for a definite period of time,*
 - b) *loan-for-use agreements and other agreements providing for making an asset available for use free of charge by other entities - the market value of the subject of a legal act shall be understood as the equivalent of benefits which would be available in the case of entering into a rental or lease agreement for:*
 - *one year - if an asset is made available for use on the basis of agreements entered into for an indefinite period of time,*
 - *the whole term of an agreement - for agreements entered into for a definite period of time,*
- 2) *purchasing components of non-current assets within the meaning of the Accounting Act of 29 September 1994 whose value exceeds:*
 - a) *100,000,000 zlotys, or*
 - b) *the value of 5% of the total assets within the meaning of the Accounting Act of 29 September 1994 established on the basis of the latest approved financial statements,*
 - 3) *acquiring or purchasing shares/interests in another company whose value exceeds*
 - a) *100,000,000 zlotys, or*
 - b) *the value of 10% of the total assets within the meaning of the Accounting Act of 29 September 1994 established on the basis of the latest approved financial statements,*
 - 4) *disposing of shares/interests in another company whose value exceeds*
 - a) *100,000,000 zlotys, or*
 - b) *10% of the total assets within the meaning of the Accounting Act of 29 September 1994 established on the basis of the latest approved financial statements”.*

After an analysis of the draft resolutions submitted by the Shareholder and concerning amendments to Company Statutes it appears that the amendment specified in this item should concern § 37 clause 3 of the Company Statutes, and not § 35 clause 3.

11. § 41¹ is added with the following wording:

- “1. The Company's disposal of components of non-current assets within the meaning of the Accounting Act of 29 September 1994 whose value exceeds 0.1% of the total assets established on the basis of the latest approved financial statements shall be carried out in the form of a tender procedure, unless the value of a component to be disposed of is lower than 20,000 zlotys.*
2. *The Company may dispose of the components of the non-current assets without conducting a tender procedure if:*
 - 1) *the subject matter of an agreement is shares/interests or other financial components of the assets or licences, patents or other industrial property rights or know-how, if the conditions for a sales procedure other than a public tender procedure are determined by a resolution of the Supervisory Board,*
 - 2) *a disposal takes place under liquidation proceedings in accordance with principles specified in a resolution of the General Meeting, subject to separate regulations,*
 - 3) *the subject matter of a disposal is housing units constituting the property of the Company,*

- the sales price is not lower than 50% of their market value, and they are sold to their tenants or people residing permanently with tenants within the meaning of Article 4 item 13 of the Competition and Consumer Protection Act of 21 August 1997, the sales price shall take into account the fact that housing units to be sold are occupied; the value of improvements made by a tenant shall be credited towards the price of a particular housing unit,*
- 4) in other justified cases, upon a motion of the Management Board, for the price and in accordance with the principles determined in a resolution of the Supervisory Board,*
 - 5) a disposal is to be made for the benefit of subsidiaries,*
 - 6) the subject matter of a disposal is CO² emission allowances or their equivalents.*
- 3. Non-current assets shall be disposed of under the following procedure:*
- 1) An announcement about a tender procedure shall be published in the Public Information Bulletin on the relevant website of the Minister of Energy, on the Company's website, in a visible and publicly available place in the Company's registered office and in other places used commonly for such announcements,*
 - 2) A tender procedure shall be conducted not earlier than 14 days after the date of the publication of an announcement,*
 - 3) The following people and entities shall not participate in tender procedures:*
 - a) the Members of the Management Board and the Supervisory Board,*
 - b) the entity conducting a tender procedure as well as the Members of its Management Board and Supervisory Board,*
 - c) people who have been entrusted with the performance of actions related to the conduct of a tender procedure,*
 - d) spouses, children, parents and siblings of people referred to in letters a-c,*
 - e) people who remain with the person conducting a tender procedure in a legal or factual relationship which may give rise to justified doubts as to the impartiality of such a person,*
 - 4) Participation in a tender procedure shall depend on the payment of a tender bond in the amount of at least 5% of the asking price of an asset to be sold. The regulations referred to in item 8 may provide for a higher amount of a tender bond.*
 - 5) Before the beginning of a tender procedure the Company shall determine the asking price which may not be lower than the market value determined by expert surveyors; if the market value cannot be determined, the asking price may not be lower than the net book value,*
 - 6) The Company may refrain from having a component of the non-current assets to be sold assessed by an expert surveyor if:*
 - a) the cost of such assessment would obviously exceed the asset's market value,*
 - b) the component of the non-current assets has a determined market price,*
 - 7) Tender procedures shall be conducted in the following forms:*
 - a) an oral tender procedure,*
 - b) a written tender procedure,*
 - 8) The Company shall determine regulations specifying the principles and rules of conducting a tender procedure, the content of an announcement about a tender procedure, the form of a tender procedure, and the conditions of a tender procedure,*
 - 9) The organizer of a tender procedure shall be entitled to close the tender procedure without selecting any of the submitted bids without providing any reasons,*
 - 10) The bidder who has submitted the highest bid shall win the tender procedure.*

12. In § 42, items 8) and 9) are added with the following wording:



“8) in companies for which the Company is the parent company within the meaning of Article 4 item 3 of the Competition and Consumer Protection Act of 16 February 2007, in connection with article 17 clause 7, Article 18 clause 2, Article 20 and Article 23 of the Act on the Management of State-owned Property, to implement the principles specified in the Act on the Management of State-owned Property,

9) to draw up, at least once a year, a report on representation expenses, expenses on legal services, marketing services, public relations services and social communication services, as well as management consultancy services and to submit such a report together with an opinion of the Supervisory Board to the General Meeting”.

13. The following present wording of § 45 clause 7 of the Company Statutes:

“7. Whenever these Statutes refer to the conclusion of an agreement, the following shall be adopted to determine its value:

1) in the case of an agreement concluded for a definite period of time - the total value of benefits under such an agreement for its entire term,

2) in the case of an agreement concluded for a indefinite period of time - the total value of benefits under such an agreement for a period of 5 years.

If it is impossible to determine benefits under a concluded agreement, their value shall be assessed approximately.”

is to be replaced as follows:

“7. Whenever these Statutes refer to the conclusion of an agreement – if these Statutes do not provide for any other basis – – the following shall be adopted to determine its value:

1) in the case of an agreement concluded for a definite period of time - the total value of benefits under such an agreement for its entire term,

2) in the case of an agreement concluded for a indefinite period of time - the total value of benefits under such an agreement for a period of 5 years.

If it is impossible to determine benefits under a concluded agreement, their value shall be assessed approximately.”

14. In § 45 clause 8, the following phrase is to be deleted:

“(Journal of Laws of 2012, item 1059, as amended)”

After an analysis of the draft resolutions submitted by the Shareholder and concerning amendments to Company Statutes it appears that the amendment specified in this item should concern clause 9 in § 45 of the Company Statutes, and not § 45 clause 8.

Thus the following present wording of § 45 clause 9: “Whenever these Statutes refer to the Energy Law, it shall mean the Energy Law of 10 April 1997 (Journal of Laws of 2012, item 1059, as amended).”

is to be replaced by the following wording:

“9. “Whenever these Statutes refer to the Energy Law, it shall mean the Energy Law of 10 April 1997.”

15. In § 45 clause 9, the following phrase is to be deleted:

“(Journal of Laws of 2015, item 196, no. 163, item 891, as amended)”

After an analysis of the draft resolutions submitted by the Shareholder and concerning amendments to Company Statutes it appears that the amendment specified in this item should concern clause 10 in § 45 of the Company Statutes, and not § 45 clause 9.

Thus the following present wording of § 45 clause 10: *“10. Whenever these Statutes refer to the Geological and Mining Law, it shall mean the Geological and Mining Law of 9 June 2011 (Journal of Laws of 2015, item 196, no. 163, item 981, as amended).”*

is to be replaced by the following wording:

“10. Whenever these Statutes refer to the Geological and Mining Law, it shall mean the Geological and Mining Law of 9 June 2011.”



A justification to amendments to the Statutes of PGE Polska Grupa Energetyczna S.A. submitted by the Shareholder - the State Treasury in a letter on 29 May 2017:

The Act on the Management of State-owned Property of 30 December 2016 obliges entities authorized to exercise rights related to shares owned by the State Treasury to take measures with a view to determining, by way of a resolution of a general meeting or a provision of company statutes, matters which should require particular supervision with respect to the disposal of a company's assets. The Act also determines requirements to be met by candidates for members of supervisory and management bodies. It provides an additional obligation to implement a selection procedure for members of a management board after a recruitment procedure to be conducted by a supervisory body in order to check and assess candidates' qualifications.

In view of their character and significance, the proposed changes need to be reflected in the provisions of company statutes. As an internal document regulating the functioning of a company, statutes should be characterized by a clear division of competences among corporate governing bodies, should contain transparent regulations concerning asset management, investment decision making, the appointment of members of supervisory and management bodies, the determination of their remuneration as well as standards applicable to actions taken by company management boards in such areas as, for example, consultancy, marketing, sponsoring or entertainment expenses. Pursuant to the Act on the Management of State-Owned Property of 16 December 2016, these areas need to be standardized uniformly in companies in which the State Treasury holds shares. Therefore, it is reasonable to implement the provisions of the Act directly into the Company Statutes, and not through resolutions to be adopted by the General Meeting.

Irrespective of the above, it should be emphasized that the proposed amendments do not jeopardize the interests of minority shareholders. Moreover, they will provide minority shareholders with better access to information on the Company and greater impact on the decision making process.