

## **STATUTES OF PCC INTERMODAL S.A. [JOINT STOCK COMPANY]**

### **GENERAL PROVISIONS**

#### **§ 1.**

1. The name of the Company shall be PCC INTERMODAL JOINT STOCK COMPANY.
2. The Company may use the contracted name PCC INTERMODAL S.A. and a graphic trademark.

#### **§ 2.**

1. Company shall be seated in the city of Gdynia.
2. The Company shall act on the territory of the Republic of Poland and abroad.
3. The Company may open branches, agencies, plants, enterprises and other units as well as join other companies.

#### **§ 3.**

1. The Company has been established in result of transformation of a company called : PCC Rail Containers Company with limited liability into a joint stock company
2. The Company shares shall be held by its former shareholders of PCC Rail Containers Sp. z o. o. that is :
  - European law company, with business name PCC SE, seated in Duisburg, Germany,
  - Polish law company, with business name PCC RAIL S.A. seated in Jaworzno.

### **BUSINESS ACTIVITY OF THE COMPANY**

#### **§ 4.**

1. The subject of the Company business activity (according to the Polish Classification of Business Activities 2007) shall be :
  - 1.) PKD 01.1. – agricultural crops other than long-term crops
  - 2.) PKD 33.12.Z – repair and maintenance of machines

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- 3.) PKD 33.17.Z – repair and maintenance of other transport equipment
- 4.) PKD 33.20.Z – industrial machinery and equipment installation
- 5.) PKD 41.10.Z – implementation of construction projects connected with erecting buildings
- 6.) PKD 42.11.Z – works connected with road-building
- 7.) PKD 42.12.Z - works connected with railway and underground railway building
- 8.) PKD 42.99.Z - works connected with civil engineering objects building, not classified elsewhere
- 9.) PKD 46.71.Z – wholesale trade of fuels and derivative products,
- 10.) PKD 47.30.Z – retail trade of fuels to motor vehicles at petrol stations,
- 11.) PKD 49.20.Z – railway transport of goods,
- 12.) PKD 49.41.Z – road transport of goods,
- 13.) PKD 50.20.Z - sea transport and coastal transport of goods
- 14.) PKD 50.40.Z – water, inland transport of goods
- 15.) PKD 52.10.B – storing and warehousing of other goods,
- 16.) PKD 52.21.Z – other supporting land transport activities,
- 17.) PKD 52.22.A – other supporting sea transport activities
- 18.) PKD 52.22.B – other supporting inland transport activities
- 19.) PKD 52.24.A – handling of goods in sea harbors
- 20.) PKD 52.24.B – handling of goods in inland harbors
- 21.) PKD 52.24.C - handling of goods in other handling units
- 22.) PKD 52.29.A– activities of maritime transport agencies,
- 23.) PKD 52.29.B – activities of inland transport activities ,
- 24.) PKD 52.29.C– activities of other transport agencies,
- 25.) PKD 64.92.Z – other forms of granting credits,
- 26.) PKD 66.19.Z – other supporting financial service activities, excluding insurance and retirement funds
- 27.) PKD 68.10.Z – purchase and sale of real estates on own account,
- 28.) PKD 68.20.Z – rental or management of own or leased real estates
- 29.) PKD 74.90.Z – other professional, scientific and technical activity, not classified elsewhere
- 30.) PKD 77.12.Z – rental of other motor vehicles, excluding motorbikes
- 31.) PKD 77.39.Z – rental of other machinery, equipment and material goods, not classified elsewhere

## INITIAL CAPITAL

### § 5.

1. The Company initial capital shall be PLN 77.565.556 and is divided in the following way :
  - a) 32.539.332 registered shares of A-series, having the nominal value of PLN 1 (one) each,
  - b) 28.269.668 ordinary bearer shares of B-series, having the nominal value of PLN 1 (one) each,
  - c) 6.756.556 ordinary bearer shares of C-series, having the nominal value of PLN 1 (one) each,
  - d) 10.000.000 ordinary bearer shares of D-series, having the nominal value of PLN 1 (one) each

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2. The initial capital shall be covered by the assets of the company being transformed.
3. Following a written demand of a shareholder the Board of Directors will change the registered shares into the bearer's shares and the bearer's shares into the registered shares. After this change the Board of Directors will undertake actions aiming at reflection of the real number of registered shares and bearer's shares in the contents of the Statutes through changing the Statutes at the nearest general meeting of Shareholders.
4. The company shares of A series shall be privileged in such a way that each of them authorizes to two votes at the General Meeting of Shareholders.
5. Company shall be entitled to purchase own shares for the purpose of their redemption.
6. The shares may be redeemed, through a resolution adopted by the General Meeting of Shareholders, with the shareholder's consent, through their purchase by the Company (voluntary redemption).
7. Redemption of shares, with the reservation of clause 9, shall require a resolution adopted by the General Meeting of Shareholders. The resolution should determine, in particular, the legal base of redemption, the amount of consideration vested to the shareholder of the redeemed shares or justification of the shares' redemption without consideration as well as the manner of the initial capital reduction.
8. Redemption of shares shall need lowering of the initial capital. With the reservation included in clause 9, the resolution concerning lowering of the initial capital should be adopted at the same General Meeting of Shareholders where a resolution concerning redemption of shares was adopted.
9. Without convocation of the General Meeting of Shareholders the Board of Directors will forthwith redeem :
  - a) The shares which were purchased with violation of the regulations contained in art. 362 § 1 or § 2 Code of Commercial Partnerships and Companies, which were not disposed of within a year from the date of their purchase by the Company,
  - b) Other own shares of the Company, which exceed 10% of the Company initial capital, not disposed of within two years' time from the date of purchase of the shares.
10. The Management Board is authorised, pursuant to Art. 444 of the Commercial Companies Code, to increase, during the period of three years from [date of convention of the General Meeting], the share capital of the Company by the amount not exceeding PLN 14,434,444, in accordance with the terms and conditions specified in this article ('Target share capital').
11. Pursuant to the authorisation granted to it the Management Board can increase the share capital once or several times within the limits of the amount specified in Section 10.
12. The Management Board can issue shares in exchange for financial or in-kind contributions.
13. The issue of shares in exchange for in-kind contributions and determination of the issue price of shares by the Management Board does not require consent of the Supervisory Board.
14. The Management Board has the right to deprive shareholders of their preemptive right or subscription warrants, referred to in Section 15, in total or

in part, in respect of each and every increase of the share capital within the limits of the Target Share Capital, upon consent of the Supervisory Board.

15. The Management Board is authorised to issue registered or bearer subscription warrants authorising their bearer to subscribe or take over shares within the limits of the Target Share Capital excluding the preemptive right (subscription warrants) with the date of execution of the subscription right falling on the date determined by the Management Board, not later, however, than after the lapse of the period referred to in Section 10.
16. The Management Board shall decide on any other matters related to the increase of the share capital within the scope of the Target Share Capital, and, in particular, the Management Board shall have the right to take actions connected with dematerialisation of the issued shares and with conclusion of contracts with the National Depository for Securities (Krajowy Depozyt Papierów Wartościowych S.A.) on registration thereof and also with applying for admission and floating of issued shares in the regulated market organised by the Warsaw Stock Exchange.

**§ 6.**

The Company may issue bonds, including debentures exchangeable to shares.

## **THE COMPANY AUTHORITIES**

**§ 7.**

The Company authorities shall be :

- A. the Board of Directors ,
- B. the Supervisory Board,
- C. the General Meeting of Shareholders.

### **A. BOARD OF DIRECTORS**

**§ 8.**

1. The Management Board has between one and four persons.
2. A single-person Management Board consists of the Chairperson of the Management Board. If the Management Board consists of more than one person then, apart from the Chairperson, the Management Board may also consist of Deputy Chairpersons or other Members of the Management Board.
3. Members of the Management Board are appointed and dismissed by the Supervisory Board. A member of the Management Board can also be dismissed or suspended by the General Meeting.
4. The term of office of the Management Board members is common. The common term and mandate expires as of the date of the Ordinary General Meeting during which the financial statement for the second full financial year of the term of office of the Management Board has been approved. It is

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assumed that the first common term of office commences on the date following the date of the Ordinary General Meeting during which the financial statement for 2010 was approved.

5. The number of members of the Management Board for a given term is determined by the Supervisory Board. During the Management Board's term of office the Supervisory Board may decide to change the number of its members, subject to the provisions of Section 1.
6. A member of the Management Board or the entire Management Board can be dismissed before the end of the term by the Supervisory Board or by the General Meeting.

### **§ 9.**

1. The Board of Directors shall manage the Company affairs and represent it.
2. The Board of Directors shall act pursuant to the regulations having been developed by the Board of Directors themselves and acknowledged by the Supervisory Board.
3. The resolutions of the Board of Directors shall be adopted with absolute majority of votes. In case the number of votes is equal, the vote of the President shall be prevailing.
4. All the matters not reserved for competence of the General Meeting of Shareholders or the Supervisory Board shall be vested to the competence of the Board of Directors.

### **§ 10.**

1. The President and the Vice-President of the Board of Directors independently, or two members of the Board acting jointly or Member of the Board acting jointly with a proxy shall be authorized to represent the Company.
2. Appointment of a Proxy shall need consent of all the members of the Board of Directors as well as a prior consent of the Supervisory Board.
3. For performance of activities of a certain type or special activities within the scope of ordinary management the persons authorised to represent the Company may appoint proxies who will act independently within the limits of the authorisation.
4. When performing its duties the Board of Directors should provide due diligence in the economic turnover with strict compliance with the regulations and law, resolutions adopted by the General Meeting of Shareholders, resolutions of the Supervisory Board, the Company regulations and provisions contained in the Statutes.

### **§ 11.**

The Company shall be represented by the Supervisory Board or the attorney appointed in a resolution adopted by the General Meeting of Shareholders in the contracts executed between the Company and the member of the Board of Directors as well as in case of dispute between the same.

**§ 12.**

Without consent of the Supervisory Board the member of the Board of Directors shall not be allowed to deal with competitive businesses or participate in a competitive company as a partner of a civil partnership, other non-capital company or a member the authorities of a capital company or participate in any other competitive legal person as a member of its authorities.

This ban shall also cover participation in a competitive capital company, in the event when the member of the Board of Directors holds at least 10% (ten per cent) of shares or stocks or the right to appoint at least one member of the Board of Directors.

**B. SUPERVISORY BOARD**

**§ 13.**

1. The Supervisory Board consists of five persons.
2. Members of the Supervisory Board are appointed and dismissed by the General Meeting, subject to § 14.
3. The term of office of the Supervisory Board members is common. The common term and mandate expires as the date of the Ordinary General Meeting during which the financial statement for the third full financial year of the Supervisory Board's term of office has been approved. It is assumed that the first common term of office commences on the date following the date of the General Meeting during which the financial statement for 2011 was approved.
4. During its first meeting the new Supervisory Board elects from among its members a Chairperson of the Supervisory Board and a Deputy Chairperson of the Supervisory Board.
5. Individual members of the Supervisory Board and the entire Supervisory Board can be dismissed at any time.
6. Should a member of the Supervisory Board resign, die or be dismissed before the end of the term of office a new member shall be appointed to the vacant position for the period ending with the end of the Supervisory Board's term of office.

**§ 14.**

Should the term of office of a member appointed by the General Meeting expire during the term of office of the Supervisory Board the remaining members of the Supervisory Board may co-opt a new member of the Supervisory Board who will hold his/her position until his/her successor is elected by the General Meeting. The term of office of the member appointed in this manner expires as of the election of a new member of the Supervisory Board by the General Meeting.

**§ 15.**

1. The meeting of the Supervisory Board is convened and chaired by the Chairperson. Should the Chairperson be unable to fulfil his/her obligations such obligations shall be fulfilled by the Deputy Chairperson. The Chairperson chairs the meetings of the Supervisory Board in accordance with the principles set forth in the Regulations of the Supervisory Board.
2. The meetings of the Supervisory Board must be convened at least once in every calendar quarter.
3. The Supervisory Board may adopt resolutions, if a meeting is attended by at least half of its Members, and all Members have been invited. The members of the Supervisory Board may participate in its meetings by means of direct remote communication which is considered as a personal participation in the meeting.
4. Members of the Supervisory Board may participate in adoption of resolutions of the Supervisory Board by voting in writing through the agency of another member of the Supervisory Board, except for voting on the matters introduced into the agenda in the course of the meeting of the Supervisory Board.
5. The meeting of the Supervisory Board is convened by the Chairperson on his/her own initiative, on a written request of any member of the Supervisory Board or on a written request of the Management Board in which the agenda of the meeting has been proposed. The meeting should be convened within two weeks from the date on which the Chairperson received the request. Should the Chairperson fail to convene the meeting within the time limit specified above the requesting person may convene such a meeting on his/her own by announcing the date, place and the agenda of the meeting as proposed in the request referred to in the first sentence.
6. The Supervisory Board can pass resolutions in writing or by means of direct remote communication, provided that all Members of the Supervisory Board have been notified of the draft resolution.
7. Adoption of resolutions in the manner specified in Section 4 and 6 does not apply to election of the Chairperson, the Deputy Chairperson, appointment of a member of the Management Board as well as appointment, dismissal or suspension of those persons.

**§ 16.**

1. The Supervisory Board shall perform its duties jointly, provided it may delegate its Members to perform certain supervisory activities individually.
2. The resolutions of the Supervisory Board shall be adopted by absolute majority of votes. In case of equal number of votes the President's vote shall be prevailing.
3. The Supervisory Board shall act on the basis of the regulations which was resolved by the Board. The regulations will specify in details the Supervisory Board's work procedures.

**§ 17.**

1. The Supervisory Board shall supervise the Company activity.

2. Apart from the matters which are vested to the competence of the Supervisory Board under the regulations of the Code of Commercial Partnerships and Companies and other provisions contained in the Statutes, the Supervisory Board shall be entitled, in particular:
- a) to assess the financial statements and reports of the Board of Directors concerning the Company operations for the previous financial year taking into account its conformity with the books, documentation and the factual state,
  - b) to assess motions placed by the Board of Directors concerning distribution of profits or coverage of losses,
  - c) to provide the General Meeting of Shareholders with an annual written report containing the results of assessment mentioned in clauses a) and b),
  - d) to appoint and cancel the members of the Board of Directors,
  - e) to suspend a Member of the Board of Directors or the whole Board of Directors for serious reasons,
  - f) to determine consideration for the Members of the Board of Directors ,
  - g) to delegate a member or members of the Supervisory Board, for a period not longer than three months, to perform temporarily the activities of the members of the Board of Directors that have resigned, were cancelled or cannot perform their duties for other reasons,
  - h) to acknowledge the regulations of the Board of Directors,
  - i) to acknowledge the annual budgets and strategic plans of the Company,
  - j) to elect an auditor in order to make an audit or review of the financial statement of the Company,
  - k) to express consent :
    - (i) to draw up an financial obligations by the Company or to make expenses regarding a single transaction or a series of related transactions in the amount exceeding PLN 1.000.000 (one million), which were not forecasted in the acknowledged budget and exceeded ordinary management
    - (ii) to sell the Company assets, whose value exceeds 5% (five per cent) of the net value of fixed assets, excluding those which are negotiable reserves, within normal business activity,
    - (iii) to draw loans and credits of over one year term of repayment not forecasted in the acknowledged budget, other than commercial credits drawn by the Company within normal management,
    - (iv) to give by the Company warranties, guarantees not forecasted in the acknowledged budget and to make encumbrances on the Company property not forecasted in the acknowledged budget,
    - (v) to execute agreements of credit or loan, warranties or other contracts of similar type with the member of the Board of Directors, the Supervisory Board, proxy, the Company liquidator or a dominant company, or in favor of any of those,
    - (vi) to execute agreements between the Company and a close relative of the member of the Board of Directors or in any other way related to the member of the Board of Directors – in every case, and between the Company and the Company employees that are directly subordinate to the Members of the Board of Directors – in case of conclusion of a single agreement or a series of relate

- contracts exceeding the value of PLN 200.000 (two hundred thousand),
- (vii) to pay advancement as a part of the forecasted dividend,
  - (viii) to sell and purchase a real estate, perpetual usufruct or share in the real estate,
  - (ix) to take up a competitive activity by a Member of the Board of Directors,
  - (x) to grant proxy by the Board of Directors,
  - (xi) to draw up an essential agreement, not classified elsewhere, between the Company and a subsidiary (within the meaning of Financial Ministry Ordinance of 19 October 2005 on current and periodical information transferred by the issuers of securities), which is not a typical transaction, executing on market terms, within limits of operations by the Company, with a subsidiary in which the Company holds a majority share of capital,
- l) to draw up and present to the General Meeting of Shareholders:
- (i) a concise assessment of the Company situation taking into account assessment of internal control system of management risks relevant for the Company.
  - (ii) the Supervisory Board's work appraisal
  - (iii) opinions in the matters to be subjects of resolutions of the General Meeting of Shareholders.

**§ 18.**

1. The Members of the Supervisory Board shall perform their duties and rights in person.
2. The consideration for the Members of the Supervisory Board shall be determined by the General Meeting of Shareholders.
3. The Supervisory Board may apply to the Board of Directors for appointment of experts, translators and another persons of special qualifications, if this is necessary for the Board to act correctly.

**C. GENERAL MEETING OF SHAREHOLDERS**

**§ 19.**

1. The General Meeting debates as an ordinary or extraordinary general meeting.
2. The General Meeting is convened by the Management Board.
3. An Ordinary General Meeting should be held within six months after the end of every financial year. If the Management Board does not convene the ordinary General Meeting by the 3rd June every year, it can be convened by the Supervisory Board.
4. Extraordinary General Meeting can be convened also by:
  - a) the Supervisory Board, if it deems it necessary,
  - b) a shareholder or shareholders representing at least half of the share capital or at least half of the votes in the company; those shareholders appoint the chairperson of the meeting.

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5. A shareholder or shareholders representing at least one twentieth (5%) of the share capital may request convening of an extraordinary General Meeting and certain issues to be included in the agenda of such a General Meeting. The request to convene an extraordinary General Meeting should be submitted to the Management Board in writing or in an electronic form.
6. The Management Board is obliged to convene an extraordinary General Meeting within two weeks from the date of submission of a relevant request, referred to in Section 5.

### **§ 19.**

1. The General Meeting can pass resolutions only in matters included in the agenda, unless the entire share capital is represented in the General Meeting and nobody present in the meeting has objected against passing of the resolution.
2. The agenda is established by the entity which convenes the General Meeting.
3. A shareholder or shareholders representing at least 5% of the share capital may request particular issues to be included in the agenda of the next General Meeting.

### **§ 21.**

The General Meeting of Shareholders shall be held in Jaworzno, Gdynia, Warszawa or Wrocław.

### **§ 22.**

1. The General Meeting of Shareholders shall be valid and allowed to resolve regardless the number of shareholders/stockholders and represented shares, unless the regulations of the act of law and the Statutes specify otherwise.
2. Each share shall give at the General Meeting of Shareholders the right to one vote, except for shares of A series, privileged in voting in the manner specified in § 5. clause 4 in the Statutes.

### **§ 23.**

1. The resolutions of the General Meeting of Shareholders shall be adopted by absolute majority of votes, unless the regulations of the Code of Commercial Partnerships and Companies or the Statutes specify otherwise.
2. In the case determined in art. 397 Code of Commercial Partnerships and Companies, majority of  $\frac{3}{4}$  (three-quarters) votes shall be required to adopt a resolution on dissolution of the Company.
3. The resolution regarding the removal of an issue listed in the agenda may only be adopted if there are significant reasons for it. Corresponding motion concerning the above shall be justified in detail. Withdrawal or removal of an issue included in the agenda at the request of the shareholders requires a resolution of the General Meeting passed with the qualified majority of votes provided that the shareholders present at the General Meeting who have

submitted the motion to include a given issue in the agenda, give their prior consent to such a withdrawal or removal.

**§ 24.**

1. The General Meeting is opened by the Chairperson of the Management Board or a person indicated by the Chairperson; the Chairperson of the General Meeting is elected from among the persons authorised to vote.
2. The General Meeting acts on the basis of the regulations adopted by it which specify, in details, the manner in which the meeting is to be organised and chaired.

**§ 25.**

Apart from the items enlisted in the Statutes, the following operations shall require resolutions of the General Meeting of Shareholders :

- a) Consideration and acknowledgement of the report of the Board of Directors covering the Company activity and the Company financial statement for the previous financial year,
- b) Granting the vote of acceptance to the members of the Board of Directors and the members of the Supervisory Board for performance of their duties,
- c) A provision concerning claims for remedy of damage incurred when establishing or managing or supervising the Company,
- d) Disposal and lease of the enterprise or its organized part and establishing a limited rights in property on it,
- e) Issue of exchangeable debentures or debentures with the right of priority,
- f) Purchase of own shares, which are to be offered for purchase to the employees or persons who were employed by the Company or any other company related to this Company for a period of at least three years,
- g) Adoption of a resolution on distribution of profits and coverage of losses,
- h) Change in the subject of the Company business activity,
- i) Change in the Statutes,
- j) Raising or lowering the initial capital,
- k) Redemption of shares (with exclusion of redemption carried out pursuant to w § 5 clause 9 of the Statutes),
- l) Merger, division and transformation of the Company,
- m) Dissolution and liquidation of the Company,
- n) Determination of the date of acquisition of rights to a dividend and the date of the dividend payment,
- o) Entering by the Company into a credit or loan agreement, warranty or any other contract executed with the member of the Board of Directors, the Supervisory Board, proxy, liquidator or in favor of any of them,
- p) Determination of the consideration paid to the members of the Supervisory Board,
- q) Entering into an agreement with a related company, regarding management of the related company or transferring the profit by such a company.

**§ 26.**

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The competence enlisted in § 25 clause 1 item *c - n* of the Statutes shall be performed by the General Meeting of Shareholders :

- a/ following the motion of the Board of Directors, submitted along with the written opinion of the Supervisory Board,
- b/ following the shareholders' motion, representing at least 10% (ten per cent) of the initial capital, assessed by the Board of Directors and the Supervisory Board. Absence of such an opinion, despite asking for it at least 14 (fourteen) days before holding the General Meeting of Shareholders, shall be regarded as absence of any objections.

## **COMPANY FINANCIAL ECONOMY AND ACCOUNTANCY**

### **§ 27.**

The enterprise organization of the Company shall be regulated in the Regulations determined by the Board of Directors.

### **§ 28.**

1. The Company own capitals shall be :
  - a) The initial capital ,
  - b) The reserve capital ,
  - c) The supplementary capitals.
  
2. The Company may form and annul the supplementary capitals through a resolution adopted by the General Meeting of Shareholders at the beginning of and during the financial year.

### **§ 29.**

The financial year shall be the calendar year.

### **§ 30.**

1. The Company pure profit may be assigned to the following, in particular :
  - a) increase of the initial capital,
  - b) allocations to the supplementary capital,
  - c) allocations to the reserve capitals,
  - d) dividend for the shareholders,
  - e) other purposes specified in the resolution adopted by the General Meeting of Shareholders.
2. The Board of Directors shall be authorized to adopt a resolution regarding paying the advance payment to the shareholders as a part of the forecasted dividend at the end of the financial year, if the Company owns sufficient funds to pay the dividend. The payment of the dividend requires consent of the Supervisory Board.

3. The Company may pay the advance payment for the forecasted dividend, if its acknowledged financial statement for the previous financial year displays profit. The advance payment may constitute at most half of the profit obtained from the end of the previous financial year, shown in the financial statement audited by an auditor, increased by the reserve capitals formed from the profit, which may be disposed of by the Board of Directors in order to pay the dividend, and diminished by uncovered losses and own shares.
4. The date to determine the right to dividends and the date of the dividend payment should be arranged in such a manner that the time between these dates would be as short as possible, in every case not longer than 15 (fifteen) working days. Fixing a longer period of time between these dates requires a detailed justification.
5. General Meeting of Shareholders Resolution on the payment of conditional dividend can contain only conditionals whose the realization would be possible before determining right to dividends.

## **FINAL PROVISIONS**

### **§ 31.**

The announcements required by law which derive from the Company shall be published in „*Monitor Sądowy i Gospodarczy*” [*Court and Economic Monitor*], unless the regulations in force specify otherwise.

### **§ 32.**

In the matters not unregulated therein the regulations of the Code of Commercial Partnerships and Companies shall apply.

### **§ 33.**

Founders of the Company are shareholders existing at the PCC Rail Containers sp. z o.o.:

- European law company, business name PCC SE, seated in Duisburg, Germany,
- Polish law company, business name PCC RAIL S.A., seated in Jaworzno.