



# **The STATUTE of**

**Elektrociepłownia „Będzin” S.A.  
[Combined Heat and Power Plant “Będzin” PLC]**

Uniform text

Będzin, 2014

## **I. GENERAL PROVISIONS**

### **§ 1**

1. The full name of the Company is Elektrociepłownia "Będzin" Spółka Akcyjna [Combined Heat and Power Plant "Będzin" PLC].
2. The Company may use the following abbreviation: Elektrociepłownia "Będzin" S.A. and its unique logo.
3. The Company's registered head office is located in the city of Będzin.

### **§ 2**

The Company was created as the result of transformation of a national company Elektrociepłownia "Będzin" [Combined Heat and Power Plant "Będzin"].

### **§ 3**

The Company operates in accordance with the provisions of the Commercial Companies Code, other legal acts and the Statute.

### **§ 4**

1. The Company operates in the Republic of Poland and abroad.
2. The Company may set up and close down plants, branches, subsidiaries, joint companies and other endeavours within the area of the Company's operations.

## **II. THE AIM OF THE COMPANY'S BUSINESS**

### **§ 5**

The aims of the Company include:

1. steam, hot water and air conditioning manufacturing and supply [PKD 35.30.Z]
2. other out-of-school forms of education, not elsewhere classified [PKD 85.59.B]
3. business and other management consultancy activities [PKD 70.22.Z]
4. production of electricity [PKD 35.11.Z]
5. transmission of electricity [PKD 35.12.Z]
6. distribution of electricity [PKD 35.13.Z]
7. trade of electricity [PKD 35.14.Z]
8. works related to construction of transmission pipelines and distribution networks [PKD 42.21.Z]
9. works related to construction of telecommunications and electricity lines [PKD 42.22.Z]
10. rental and operating of own or leased real estate [PKD 68.20.Z]

## **III. EQUITY CAPITAL**

## **§ 6**

1. The equity capital of the Company consists of the founding fund and the company fund, as in the national company, in accordance with the provisions of § 2, in which the equity capital is PLN 15.746.000 (say: fifteen million seven hundred forty six thousand PLN), and the remaining part of the equity is the Company's supplementary capital .
2. The additional funds created by the Company, as of their value on the opening balance day, maintain the original purpose of the existing additional funds as per the closing balance day of a national company in accordance with the provisions of § 2.
3. The share capital of the Company is divided into 3.149.200 (say: three million one hundred forty nine thousand two hundred) ordinary bearer shares of the A series, numbered 000 000 001 to A 003 149 200, of the nominal value of PLN 5 (say: five PLN) each.
4. If new shares are issued, each and every new placed series will be market with subsequent letters of the alphabet.

## **§ 7**

1. All shares of the Company are ordinary bearer shares.
2. Shares may be redeemed at Shareholder's consent by their purchase by the Company (voluntary redemption) as per adoption of an appropriate resolution by the General Meeting and skating the reason of the redemption.

## **IV. MANAGEMENT OF THE COMPANY**

### **§ 8**

The managing of the Company is ensured by:

1. the Management Board of the Company,
2. the Supervisory Board,
3. the General Meeting of Shareholders.

### **A. THE MANAGEMENT BOARD OF THE COMPANY**

#### **§ 9**

1. The Management Board consists of 2 to 6 members. The number of members of the Management Board is determined by the Supervisory Board.
2. The term of the office of the Management Board is 3 years.
3. The Supervisory Board appoint and dismissed the President of the Management Board and the remaining members of the Management Board.

#### **§ 10**

1. The Management Boards of the Company manages the Company's business activity and is the representative body of the Company.
2. The detailed operations of the Management Board are outlined in the Rules and Regulations of the Management Board, which is passed by the Management Board and adopted by resolution by the Supervisory Board.
3. Any matters Beyond the competence of the ordinary management require resolutions of the Management Board, especially the rules and regulations of the organization which determine the organization of the company, taking out credits and loans, granting loan guarantees and security interests in property, and also any matters which the Management Board needs to refer to the General Meeting and the Supervisory Board.
4. The Management Board of the Company is obliged to prepare an economic plan (including the provisions of the plan, balance sheet plan, income statement, task fulfillment plan, fiscal liquidity plan, investment and renovation plan, employment plan) in due time, that is before the beginning of each fiscal year, which shows the forecast income, costs and investments, but is not limited to this data. The economic plan consists of the data for the first fiscal year taken into consideration in the intermediate plan.
5. The Management Board of the Company is obliged to prepare a uniform text of the Statute of the Company immediately whenever any changes are made and registered by the registry court, and also to submit the text to the Supervisory Board on request of the Supervisory Board.
6. Resolutions of the Management Board are adopted by absolute majority of votes. Whenever an equal amount of for and against votes occurs, the vote of the President of the Management Board is decisive. The absolute majority of votes means at least one vote more than the sum of the remaining valid votes (against and abstaining).

## **§ 11**

In order to submit a statement of will on behalf of the Company, the cooperation of at least two members of the Management Board is necessary or cooperation of one member of the Management Board and proxy.

## **§ 12**

Any agreements with the President of the Management Board and other members of the Management Board are made on behalf of the Company and in accordance with the provisions of regulations adopted by the Supervisory Board by representative of the

Supervisory Board delegated by and from among its members. The same procedure applies to other legal activities between the Company and member of the Management Board.

## **B. THE SUPERVISORY BOARD**

### **§ 13**

1. The Supervisory Board consists of 5 (five) to 6 (six) members.
2. The collective term of office of the Supervisory Board is 5 (five) years.
3. The General Meeting appoints and dismisses the members of the Supervisory Board in accordance with the provisions of regulations of the applicable legal Act and the Company's Statute.
4. *Shall the number of members of the Supervisory Board decrease to less than 5 (five) members, the Management Board convenes the General Meeting in order to fill the composition of the Supervisory Board.*
5. The members of the Supervisory Board perform their duties in person only.
6. Only members of the Management Boards and invited persons may participate in the meetings of the Supervisory Board.
7. The Supervisory Board adopts its own rules and regulations.

### **§ 14**

1. The Supervisory Board appoints and may dismiss from among its members the Chairman of the Supervisory Board in a secret ballot.
2. Deleted.
3. The meetings of the Supervisory Board are convened and chaired by the Chairman of the Supervisory Board, and if it is impossible to convene a meeting by the Chairman, the person is delegated by the Chairman of the Supervisory Board to do so. The Chairman of the Supervisory Board of the previous term convenes and opens the first meeting of the newly appointed Supervisory Board and chairs the meeting until the new Chairman of the Supervisory Board is appointed.
4. If the Chairman of the Supervisory Board of the previous term fails to convene the first meeting of the Supervisory Board within one month from the notice from the Management Board of the Company, the meeting shall be convened and opened by the President of the Management Board.

### **§ 15**

1. The Supervisory Board Has its meetings at east every three months.
2. The meeting of the Supervisory Board is convened by its Chairman or in the event of the Chairman's absence, by the person appointed by the Chairman, within seven days before the deadline, and in the form of a written invitation which states the place, date, time and agenda of the meeting.
3. The Chairman of the Supervisory Board is obliged to convene a meeting of the Supervisory Board on the basis of a written motion of a member of the Supervisory Board or on the basis of motion of the Management Board of the Company. The meeting shall take place within two weeks from the date of submitting the motion.
4. The Supervisory Board shall have its meetings with the use of distance communication tools, including networks facilitating videoconferencing. Whenever the meetings of the Supervisory Board are convened in the form indicated above, the Chairman or the person appointed by the Chairman sends out information to all members of the Supervisory Board with the time, access location and technical details of the connections.

#### **§ 16**

1. The Supervisory Board adopts resolutions by absolute majority of votes, with the presence of at least half of the members of Supervisory Board. The absolute majority of votes means at east one vote more from the sum of the remaining valid votes (against and abstaining).
2. The Supervisory Board adopts its rules and regulations, which specifies the details of its activity.
3. The Supervisory Board may adopt resolutions without convening a meeting.
4. In the case outlined in item 3, the Chairman or the person appointed by the Chairman send out the resolution draft to all members of the Supervisory Board by registered letter. The members of the Supervisory Board vote by writing on the Project "I vote for", "I vote against" or "I abstain from voting" and sign the vote legibly. Thus signed resolution is sent out by the members of Supervisory Board to the Chairman of the Supervisory Board within three days from the date of its reception.
5. Resolution is considered adopted on the day of its signing by the last member of the Supervisory Board.
6. Resolutions of the Supervisory Board adopted in accordance with the provisions of regulations indicated above are subject to regulations from § 16 of the Statute of the Company concerning the required majority of votes to adept resolution and counting the majority of votes. Failure to send back a signed resolution to the Chairman of the Supervisory Board within the deadline is considered as vote "against".

7. The Supervisory Board shall adopt resolutions in accordance with the regulations outlined in the hereby paragraph regarding all matters within the Board's scope of competence. These regulations are not applicable to any matters which require a secret ballot.

#### **§ 16 A**

1. The Supervisory Board may adopt resolutions at meetings maintained via distance communication tools, especially via networks facilitating videoconferencing.
2. In case outlined in the hereby paragraph, the Supervisory Board can not adopt resolutions which require a secret ballot.

#### **§ 17**

1. The Supervisory Board performs a continuous supervision of the activity of the Company.
2. The competences of the Supervisory Board include the following:
  - 1) Accepting the rules and regulations of the Management Board of the Company and passing opinions concerning the organizational rules and regulations which describe the organization of business activity of the Company,
  - 2) Accepting the economic plan,
  - 3) Adopting the rules of remuneration of the Management Board and the amount of remuneration for the members of the Management Board of the Company,
  - 4) Appointing and dismissing the members of Management Board and the whole Management Board in secret ballot,
  - 5) Suspending due to significant reasons one or more members of the Management Board in secret ballot,
  - 6) Appointing a member or members of the Supervisory Board to perform temporarily the duties of the member of the Management Board of the Company in the event of suspension or dismissal of members of the Management Board or the whole Management Board or when the Management Board is unable to perform its duties due to other reasons,
  - 7) Granting permission for opening branches abroad upon motion of the Management Board,
  - 8) Upon motion of the Management Board, granting members of the Management Board permission to hold posts in the management of other companies which shares or stocks the Company possesses and to receive remuneration for those activities,

- 9) Issuing opinions regarding candidates for proxy upon motion of the Management Board,
  - 10) Granting permission to enter into, amend or terminate agreements between the Company and third parties if such agreements are significant to the Company. An agreement is considered significant if, but not only if, its financial liability exceeds PLN 2.000.000,00 (say: two million PLN). Investments shall be always approved if each undertaking leads to obligations exceeding PLN 2.000.000,00 (say: two million PLN). The first rule is not applicable to annual agreements made by the Company to purchase raw materials necessary for production of heat and electricity, and also to annual agreements made by the Company for sale of heat and electricity; in such cases the Supervisory Board may require further information,
  - 11) Selecting the statutory auditor to perform the audit of the financial statement,
  - 12) Audit the financial statement regarding its compliance with the books and documents and the actual state of affairs,
  - 13) Audit of the report of activity of the Company and the motions of the Management Board concerning the division of profits and covering the losses,
  - 14) Submitting a written report of results of activities indicates in item 12 and 13 to the General Meeting,
  - 15) Consent to create a different company by the Company, to take over or purchase shares or stocks of a different company in order to secure the financial credibility of the Company and in the case of bankruptcy, insolvency or settlement,
  - 16) Determining the way to execute the right to vote which stems from the possession of shares or stocks on the General Meeting of companies in which the Company holds 50% of shares or stocks, especially in the following matters:
    - a) Changes in the Statute and agreement,
    - b) Increasing or decreasing the share capital,
    - c) Merger with a different company or transformation,
    - d) Selling the Company shares, renting or selling its property,
  - 17) Consent to sell the purchased or gained shares or stocks in other companies, including the regulations and form of the sale, with the exception of:
    - a) Selling shares which are in public circulation,
    - b) Selling shares which belong to the Company in a package which does not exceed 10% of shares in share capital of the Company.
3. The Supervisory Board upon motion of the Management Board makes decisions by resolutions regarding purchase and sale of real estate, hereditary lease or holding



shares in real estate by the Company. If the Supervisory Board adopts a resolution the consent of the General Meeting outlined in the provisions of Article 393, item 4. of the Commercial Companies Code is not required.

4. Deleted.

### **§ 18**

1. The members of the Supervisory Board may participate in adopting resolutions by the Supervisory Board by voting in writing by proxy of another member of the Supervisory Board. Voting in writing will not concern matters introduced to the agenda during the very meeting of the Supervisory Board.
2. Remuneration of the members of the Supervisory Board is determined by the General Meeting subject to paragraph 3.
3. Remuneration of member of the Supervisory Board appointed to perform temporarily the duties of the member of the Management Board is determined by resolution of the Supervisory Board.

## **C. THE GENERAL MEETING OF SHAREHOLDERS**

### **§ 19**

1. The General Meeting meets as an ordinary or extraordinary assembly.
2. The Ordinary General Meeting is convened by the Management Board of the Company.
3. The Extraordinary General Meeting is convened by the Management Board of the Company:
  - 1) Upon its own motion,
  - 2) Upon a written motion of the Supervisory Board,
  - 3) Upon the motion of shareholders who represent at least one twentieth of the share capital.
4. Convening the Extraordinary General Meeting upon a motion of the Supervisory Board or shareholders should take place within two weeks from the date of submitting the motion.
5. The Supervisory Board convenes the General Meeting:
  - 1) If the Management Board did not convene the Ordinary General Meeting within the due date,
  - 2) If despite submitting the motion mentioned in paragraph 3, item 2 and 3, the Management Board did not convene the General Meeting within the date mentioned in paragraph 4.

6. The applicable regulations may determine other regulations of convening the General Meeting.

#### **§ 20**

1. The General Meeting shall adopt resolutions only regarding matters on the agenda of the meeting, subject to the provisions of Article 404 of the Commercial Companies Code.
2. The agenda of the meeting is prepared by the Management Board of the Company or the entity which convenes the General Meeting.
3. The Supervisory Board and shareholders who represent at least one twentieth of the share capital may demand including various matters on the agenda of the next General Meeting.
4. Deleted.

#### **§ 21**

1. The General Meeting is held in the Company's head office or in another place selected by the Management Board but on the territory of the Republic of Poland only.
2. The General Meeting adopts its regulations which determine the procedures of the General Meeting.

#### **§ 22**

The General Meeting is opened by the Chairman of the Supervisory Board, the person appointed by the Chairman or another representative of the Supervisory Board, and then the Chairman is selected from among the members entitled to vote.

#### **§ 23**

1. Resolutions adopted by the General Meeting are required for the following:
  - 1) consideration and acceptance of the report of the Management Board regarding the activity of the Company and financial statement prepared on the day finishing the fiscal year of the Company and granting the vote of acceptance to the members of the Company's organs regarding performance of their duties,
  - 2) Division of profits and coverage of losses,
  - 3) Changing the aim of the business activity of the Company,
  - 4) Changing the Statute of the Company,
  - 5) Increasing or decreasing the share capital,
  - 6) Terms and conditions of redemption of shares,
  - 7) Mergers and transformations of the Company,
  - 8) Termination and liquidation of the Company,
  - 9) Issuing securities and bonds, with the exception of cheques and bills or exchange,
  - 10) Selling and renting the company, placing the right to use the company,

- 11) Creating and removing Company capital and funds,
- 12) Deleted,
- 13) Any provisions concerning claims for repairing damages which occurred upon the creation of the Company or maintaining management or supervision,
- 14) 2. Deleted.

#### **§ 24**

The change in the aim of the business activity of the Company may take place without the obligation to purchase shares, in accordance with the provisions of Article 417 § 4 of Commercial Companies Code.

### **V. ECONOMIC MATTERS OF THE COMPANY**

#### **§ 25**

1. The fiscal year of the Company is the calendar year.
2. The first fiscal year of the Company started on the date of registration of the Company and ended on December 31, 1993.

#### **§ 26**

1. The Company keeps the following capitals and funds:
  - 1) Share capital,
  - 2) Supplementary capital,
  - 3) Reserve capital from update of value quotation,
  - 4) The remaining reserve capitals,
  - 5) Social benefits fund.
2. The Company may create and terminate other capitals and funds by resolution of the General Meeting.
3. The allocation of capitals and funds is determined by provisions of law and regulations of funds adopted by the Supervisory Board upon motion of the Management Board.

#### **§ 27**

1. The Management Board of the Company is obliged to perform the following duties within two months from the balance sheet day:
  - 1) Prepare the financial statement and the report from the business activity of the Company in the given fiscal year,
  - 2) Refer the financial statement to audit by statutory auditor,

- 3) Submit documents mentioned in item 1 together with opinion and report of the statutory auditor to an audit by the Supervisory Board.
2. The Management Board is obliged to present the Ordinary General Meeting with the documents mentioned in 1 and the report of the Supervisory Board for acceptance.
3. The Ordinary General Meeting should convene within six months after the end of the fiscal year.

## **§ 28**

1. The allocation of the profit of the Company is determined by resolution of the General Meeting.
2. The General Meeting performs deductions from the profit to the share capital in accordance with the requirements outlined in Article 396 § 1 of the Commercial Companies Code.
3. The General Meeting may allocate part of the profit to the following:
  - 1) The remaining capitals and funds or other purposes adopted by resolution of the General Meeting,
  - 2) The dividend.
4. The date of granting the right to dividend and the date of dividend payment are determined by Resolution of the General Meeting regarding the allocation of the annual profit to the shareholders.

## **VI. FINAL PROVISIONS**

### **§ 29**

1. Deleted.