

Towarowa Gięlda Energii S.A.

Statute

unified text

§ 1

1. The Company's name shall be „Towarowa Gielda Energii” Spółka Akcyjna. The Company may use an abbreviated name „Towarowa Gielda Energii S.A.”¹ and counterparts of its name and abbreviated names in foreign languages as well as an identifying logo.
2. The Company's domicile is the Capital City of Warsaw.
3. The Company shall do its business on the territory of Republic of Poland and abroad.

§ 2

The Company scope of activities includes:

- 1) running of energy exchange where the following commodities may be traded:
 - a) electricity,
 - b) liquid and gaseous fuels;
 - c) production limits pertaining to electricity in particular;
 - d) air emission limits;
 - e) proprietary rights and their value depends directly or indirectly on the value of electricity, liquid or gaseous fuels, production limits and air emission limits;
- 2) settlement of exchange transactions at the commodity exchange run by the Company as well as OTC transactions clearing to the extent provided for by the legislation regulating the rules of settlement of transactions at commodity exchanges,
- 3) running a certificate register pursuant to Art. 9e par. 9 of the Act of 10 April 1997 – Power Law;
- 4) to run green certificate register for energy coming from cogeneration pursuant to Art. 9m par. 1 subpar. 2 of the Act of 10 April 1997 – Power Law
- 5) running of educational and advisory activities within the scope described in items 1 and 4 hereinabove.

§ 3

The Company's initial capital is PLN 14,500,000 (say: fourteen million five hundred zloties) and is divided into 1,450,000 (say: one million, four hundred thousand and fifty) of registered shares, each with a par value of PLN 10.00 (say: ten zloties) including:

1. 1.000.000 of founder's shares of series A numbered from 000001 do 1000000;
2. 164,000 of shares series B numbered from 1.000.001 to 1.164.000;
3. 36.000 of shares series C numbered from 1.164.001 to 1.200.000;
4. 182.500 of shares series D numbered from 1.200.001 to 1.382.500;
5. 67.500 of shares series E numbered from 1.382.501 to 1.450.000.

§ 4

1. The Company's stock consists only of registered shares. No registered shares may be exchanged for bearer shares.
2. Each of the shares bears one vote at the General Meeting of Stockholders, subject to Clause 5 below.
3. No preference is attached to any of the Company's shares.
4. The Company shares may be acquired, in addition to the Company founders listed in the Company deed of foundation, by the following parties: (a) brokerage houses operating under

¹ Commodity Energy Exchange SA

public securities trading regulations, (b) commodity brokerage houses, (c) power companies dealing with generation, transmission, distribution or trading in electricity, liquid or gaseous fuels, (d) electricity consumers with consumption above 1 GWh (one gigawatthour) of electricity per year, (e) domestic and foreign financial institutions, (f) commodity exchanges, (g) companies running regulated securities market, and (h) commercial companies whose scope of activities includes the provision of IT services and sales of software.

5. One stockholder may not exercise directly more than 10% (ten per cent) votes at the General Meeting of Stockholders, or not more than 10% (ten per cent) altogether directly from the stock held or indirectly through stockholders which are its subsidiaries. If a stockholder controls indirectly the votes of more than one stockholder, by which it has directly or indirectly more than 10% votes at the General Meeting of Stockholders, the number of votes, which the subsidiary stockholders may exercise, shall be proportionally reduced in such a manner that following a summing of votes of the principal stockholder and all its subsidiary stockholders, the total number of votes shall be not more than 10% votes from the Company's stock held. The dominant stockholder, i.e. one controlling votes indirectly, shall be a stockholder being a dominant entity, as meant by the Bill of August 21, 1997 – the Law on Public Securities Trading (*Dziennik Ustaw* No. 118, Item 754, as amended), unless this Statute provides otherwise.
6. The restriction in the exercise of voting rights, referred to in Clause 5 above, shall not refer to the exercise of voting rights by the State Treasury, and the vote of the one share held by Elektrim S.A., by which Elektrim S.A. has more than 10% in the initial capital, as long as the State Treasury is a stockholder in the Company. For the purposes of determination of voting rights, stockholders subsidiary to the State Treasury shall be considered independent entities, as if they had not been such subsidiaries.

§ 5

1. The State Treasury may not dispose of, in favour of one entity together with entities subsidiary to such entity, as meant by § 4 Clause 5 of the Statute, more shares than such a number which is equivalent to 10% of the Company's initial capital. The disposal of stock may be effected only in favour of the entities referred to in § 4 Clause 4 of the Statute, under the condition that the entities acquiring the stock, which are at the same time the Company's stockholders, together with entities subsidiary to such stockholders, as meant by § 4 Clause 5 of the Statute, may acquire from the State Treasury only such a number of shares, which together with the shares already held, would be equivalent to not more than 10% of the Company's initial capital. All entities independent from each other, but subsidiary to one dominant entity, shall be considered one entity ("Entity").
2. Transfer of title to the Company's stock shall require consent of the Supervisory Board, given with a two-thirds majority of all members of the Supervisory Board. A request for consent to dispose of stock should be considered by the Supervisory Board at its forthcoming meeting.
3. The State Treasury shall dispose of its stock with no obligation to obtain the consent of the Supervisory Board.
4. The Supervisory Board shall refuse its consent to disposal of stock, if the Entity acquiring stock would, as a result of the acquisition, exceed 10% in the Company's initial capital. Otherwise the Supervisory Board shall grant or withhold its consent at its own discretion.
5. To obtain consent for the disposal of shares the Shareholder shall submit to the Supervisory Board Chairman an application, which shall contain in particular: address and seat of the applying person, number and identification of shares to be disposed of, identification of an acquirer of Company shares, definition of entities owning directly or indirectly more than 20% of the whole number of voices on the general assembly of shareholders (partners) of the acquirer of Company shares. Together with the application the applying person should submit the financial report of the acquirer of the last accounting year, together with the auditor's opinion and the valid excerpts from relevant registers of the acquirer.

6. If the application referred to in item 5 has been filed incomplete the Supervisory Board Chairman sets for the applicant additional deadline. Failure to submit a complete application by the set deadline is equivalent to application withdrawal – under such circumstances the Company will return the application to the applicant.
7. If the Supervisory Board denies its consent for disposal of Company shares to the entity identified in the application, the Supervisory Board is obliged to indicate another acquirer. Time for indicating another acquirer shall be one month from the date when the Supervisory Board denied its consent for disposal of Company shares and it may not be longer than two months from the date of notifying the Company about an intention to sell shares.
8. If the Supervisory Board has indicated a new acquirer for shares in the Company, the price at which shares will be disposed of, shall reflect the price offered by the applicant. If the applicant has failed to come to consensus on the share price, with the acquirer indicated by the Supervisory Board, the price will be set by a consultant mutually agreed by the applicant and share acquirer indicated by the Supervisory Board. Such price will be final and binding, however, it may not be lower than the book value of shares effective on the day of filing an application for consent to sell Company shares. The payment date for shares may not be set later than within two weeks from the date of sales agreement concluded with the acquirer indicated by the Supervisory Board.
9. The share acquirer is indicated in writing, otherwise being null and void. The Supervisory Board Chairman communicates that by a registered mail to the applicant's address shown in the application seeking consent for the disposal of shares in the Company, unless the shareholder intending to acquire Company shares has indicated a new correspondence address.
10. If the Supervisory Board has failed to examine the application for the consent for the disposal of shares within time referred to in paragraph 2 hereinabove and also if the Supervisory Board has failed to indicate a new acquirer within the timeframe referred to in paragraph 7 or if in the term of 3 months from indication of the new acquirer the contract of transfer of shares will not take place, the shares may be sold without any limitations, except for the limitations under paragraph 1.

§ 6

1. The General Meeting of Stockholders may increase the initial capital by way of issuing new stock or by way of increasing the par value of the outstanding shares.
2. The stockholders shall have priority in subscribing for new stock, in proportion to the number of shares held hitherto.

§ 7

The Company's bodies are:

1. General Meeting of Stockholders,
2. Supervisory Board,
3. Board of Management.

General Meeting of Stockholders

§ 8

1. A General Meeting of Stockholders may be ordinary (annual) or extraordinary.
2. The Ordinary General Meeting of Stockholders, which should be held not later than on June 30 each year, shall be convened by the Board of Management.
3. An Extraordinary General Meeting of Stockholders shall be convened by the Board of Management in case of need or at a written request of the Supervisory Board or stockholders representing at least 10% (ten per cent) of initial capital, within 14 days of delivery of the request.

4. When the General Meeting of Stockholders is convened through an announcement, the Board of Management shall be bound to notify each stockholder in writing of the date of the General Meeting of Stockholders, not later than two weeks before the date of the Meeting. The notice should include the agenda of the Meeting.

§ 9

1. A General Meeting of Stockholders shall be validly convened, irrespective of the number of shares represented on it.
2. Resolutions of the General Meeting of Stockholders shall be adopted by an absolute majority of votes cast, with the exception of matters requiring a different majority of votes in cases provided for by the Commercial Companies' Code, except for items 3 and 4 below.
3. Resolutions referring to issue of bonds, including convertible bonds and bonds with the pre-emptive right to acquire shares, amendments to the Statute, share redemption, reduction of initial capital, sales of Company enterprise or its organised part and Company dissolution shall be adopted with a majority of four-fifths votes cast".
4. Resolutions referring to mergers with other companies, Company division or transformation into limited liability company shall be adopted with a majority of four-fifths votes cast, representing, at least, half of the initial capital.

§ 10

Voting is by show of hands. Secret ballot is ordered during the election of members of the Company's bodies and on motions to remove members of the Company's bodies or the Company's liquidators, on motions to bring them to responsibility, as well as in personal matters. Moreover, secret ballot is ordered at the request of at least one stockholder attending the General Meeting of Stockholders.

§ 11

1. The General Meeting of Stockholders is opened by the Chairman of the Supervisory Board or a person indicated by the Chairman, and then a Chairperson of the Meeting is elected from among the persons authorized to attend the General Meeting of Stockholders.
2. The General Meeting of Stockholders shall approve its Rules determining in detail the manner of its proceedings. Draft Rules are presented by the Board of Management.
3. Members of the Supervisory Board and the Board of Management enjoy a right to attend the General Meeting of Stockholders.

§ 12

Besides the matters provided for by the Commercial Companies Code and the matters provided for by the Statute, approval of the Rules of the Supervisory Board and any amendments thereto requires a resolution of the General Meeting of Stockholders.

Supervisory Board

§ 13

- 1) The Supervisory Board shall include between 8 and 12 members appointed and dismissed in the following manner:
 - a) members of the Supervisory Board for a certain term of office are appointed by the General Meeting of Stockholders, provided that every stockholder or group of stockholders, present at the General Meeting of Stockholders, holding shares in a number equivalent to at least 10% in the Company's initial capital may independently in a written form appoint one Member of the Supervisory Board for each 10% share in the Company's initial capital.
 - b) positions in the Supervisory Board, which have not been filled in the manner referred to in point (a), shall be filled by the General Meeting of Stockholders, provided that in such voting, these stockholders, who have appointed Members in the manner referred to in point (a), may not vote

with those shares, which have been used to appoint a Member of the Supervisory Board in such a manner.

- c) Dismissal of a Member of the Supervisory Board before the end of term of office of such Member requires a resolution of the General Meeting of Stockholders, with reservation that a Member of the Supervisory Board appointed by a certain Stockholder or a group of Stockholders in the manner referred to in present point may be dismissed before the end of term of such Member, and another Member may be appointed in the place of such dismissed Member, only by the Stockholder or a group of Stockholders, which has appointed such a Member, without the need to convene a General Meeting of Stockholders.
 - d) If a mandate of a Member of Supervisory Board appointed by Shareholder or group of Shareholders in the manner referred to in present clause, expires due to his death or resignation from the position before the end of term of office of such Member, the Shareholder or group of Shareholders which has appointed such Member, has the right to appoint another Member without the need to convene a General Meeting of Stockholders.
 - e) If a mandate of a Member of Supervisory Board appointed in the manner referred to in point (b) expires, Management Board of the Company shall promptly convene a General Meeting of Stockholders to make the resolution about completion of the Supervisory Board, provided that in the voting during the proceedings of General Meeting of Stockholders, these Stockholders, who have independently appointed Members of Supervisory Board in the manner referred to in present clause, may not vote with those shares, which have been used to appoint a Member of the Supervisory Board in such a manner.
- 2 In case of disposal of the Company shares by its shareholder, which appointed a Member of the Supervisory Board independently or within the group, in the manner referred to in Clause 1 Point (a), the share acquirer takes over all the rights and restrictions concerning appointment and dismissal of Members of Supervisory Board.
 - 3 All the restrictions presented in § 4 clauses 5 and 6 of the Statute can not be used to appoint and dismiss Members of Supervisory Board.
 - 4 The term of office of Members of the Supervisory Board shall be three years. All Members of Supervisory Board shall be appointed for the common term. The second term of office of all Members of Supervisory Board expires upon holding the General Meeting of Stockholders approving 2003 Company Financial Statement.
 - 5 The Members of Supervisory Board can be appointed for the forthcoming Supervisory Board terms.

§ 14

1. The Supervisory Board shall elect its Chairperson from amongst its members and may elect Vice-Chairmen and Secretary also from amongst its members.
2. The Chairperson of the Supervisory Board or at his/her absence Deputy Chairperson of the Supervisory Board, shall convene and preside over meetings of the Supervisory Board.
3. The Chairperson or at his/her absence Deputy Chairperson of the Supervisory Board shall preside over meetings of the Supervisory Board.

§ 15

1. The Supervisory Board shall meet at least once every three months.
2. The Chairperson or a Vice-Chairperson of the Supervisory Board shall be bound to convene a meeting of the Supervisory Board also at a written request of the Management Board or a member of the Supervisory Board. Those written request should contain the proposal of the agenda of the meeting. Such meeting should be held within two weeks of the delivery of such a request.

§ 16

1. Resolutions of a meeting of the Supervisory Board shall be validly adopted, if all its Members have been notified of the meeting at least 7 days before its date, and at least half of the Members of the Supervisory Board are present on the meeting.
2. Resolutions of the General Meeting of Stockholders shall be adopted by a absolute majority of votes cast, subject to § 5 Clause 2 of the Statute. In case of equal distribution of votes, the Chairperson shall have the decisive vote.
3. The Supervisory Board shall adopt its Rules, determining the manner of its procedures, subject to approval by the General Meeting of Stockholders.
4. In emergency, the Chairperson of the Supervisory Board may convene its meeting in a time shorter than that provided by § 15 Clause 2, provided that all Members of the Supervisory Board have been notified and received the agenda, and not one of the Members has objected to holding the meeting.
5. The Supervisory Board resolutions on the appointment of new Management Board members shall be valid only if a new candidate for the Board member has been presented in writing to all Supervisory Board members, at least, 7 days prior to the Supervisory Board meeting at which the candidate will be voted on.

§ 16 a

1. The Supervisory Board resolutions may be taken in writing or by using means of remote direct communication. The resolutions adopted according to the above mode are valid provided that all Supervisory Board members have been notified about the content of draft resolution, and expressed their consent to adopt resolution using such mode. The resolutions are adopted by absolute majority of votes cast, unless these Statutes stipulate otherwise.
2. Resolution adoption in accordance with item 1 above does not apply to the election of Chairman and Deputy Chairman of Supervisory Board, appointment of Management Board member as well as dismissal and suspension of fulfilment of duties by the above persons.

§ 17

1. The Supervisory Board exercises ongoing supervision over the Company's business.
2. Besides the matters reserved by other provisions of this Statute, responsibilities of the Supervisory Board shall include:
 - a) examination of the Company financial statement for a certain business year,
 - b) examination of the report of the Board of Management and its proposals as to the distribution of profit or covering the loss,
 - c) submission to the General Meeting of Stockholders of a yearly report on the results of the examination referred to in points a) and b),
 - d) suspending a member of the Board of Management or the whole Board of Management for various reasons,
 - e) delegating a Member or Members of the Supervisory Board to temporary performance of the functions of the Board of Management, if the whole Board of Management has been removed or suspended, or ins unable to act for any other reasons,
 - f) approval of the Rules of the Board of Management,
 - g) determination of remuneration for members of the Board of Management,

- h) representing the Company in contracts and disputes between the Company and members of the Board of Management,
- i) granting consent to acquisition or disposal of shares or stock in commercial law companies, if their value at the acquisition or disposal price exceeds 10% of the Company's initial capital,
- j) selection of a certified auditor to audit the Company's financial statement,
- k) approval of long-term development plans, covering a period of at least three years, determining, among other things, the framework of the Company's planned financial management and the development of the electrical power exchange,
- l) approval of the Rules of the Exchange and any amendments thereto, with resolution adopted with a qualified majority of two-thirds votes cast by Supervisory Board Members
- l) approval of the Company budget for a certain accounting year and changes to the budget

§ 18

- 3. Members of the Supervisory Board shall perform their duties and exercise their rights in person.
- 4. The Members of Supervisory Board shall be paid compensation for performing functions in the Supervisory Board in the form of monthly fees, the amount of which shall be determined every year by the General Meeting of Stockholders.

Board of Management

§ 19

- 1. The Board of Management is the Company's executive body and shall consist of 1 to 5 members.
- 2. The President and Members of the Board of Management is appointed and removed by the Supervisory Board. The right of the Supervisory Board to remove Members of the Board of Management refers also to those Members of the Board of Management, who have been appointed in the Articles of Association. The term of office of a Member of the Board of Management is three years, with the exception of the first Board of Management, whose term of office shall last two years. The candidate for the President of the Board of Management shall be agreed by the Supervisory Board with the Minister of the State Treasury, as long as the State Treasury holds no less than 10% of the Company's stock. The number of Members of the Board of Management of the given term shall be determined by the Supervisory Board. The President manages the work of the Board of Management. The resolutions are adopted by a absolute majority of votes.
- 3. The Board of Management shall manage the business and assets of the Company, and shall represent it before outside bodies. Responsibilities of the Board of Management shall include all functions not specifically reserved for the General Meeting of Stockholders and the Supervisory Board.
- 4. Meetings of the Board of Management shall be held at least once every month.
- 5. Rules of the Board of Management shall determine a detailed mode of operations of the Board of Management. The Rules shall be adopted by the Board of Management and approved by the Supervisory Board.
- 6. If amendments to the Company's Statute are adopted, the Board of Management shall be bound each time, within two weeks of the date, on which a Court Decision on registration of such amendments becomes absolute, to compile a unified text of the Company's Statute.

§ 20

- 1. If the Board of Management consists of one Member, such member shall act alone in making statements of will in the name of the Company.

2. If the Board of Management consists of two or more Members, then the statements of will in the name of the Company shall be made by two Members of the Board of Management or one Member of the Board of Management and one Procurator – acting in conjunction.

§ 21

1. Members of the Board of Management may perform functions in bodies of other undertakings only subject to prior consent of the Supervisory Board.
2. With regard to trading at the energy exchange run by the Company, the Management Board members may not trade in electricity, liquid and gaseous fuels, proprietary rights with the value dependent on prices of electricity, liquid or gaseous fuels and in emission allowances.

Management of the Company

§ 22

The Company shall establish the following capitals and funds:

- a) initial capital,
- b) reserve capital,
- c) reserve fund.

§ 23

1. The reserve capital shall be made from write-offs from distributable profit in the amount not less than 10% of such profit.
2. Write-offs to the reserve capital may be discontinued, when the value of such capital reaches one-third of the initial capital.
3. Reserve capital is designated to cover balance sheet losses, which may appear in connection with the Company's business, and to supplement the initial capital.

§ 24

Reserve fund is designated to finance investment projects and other expenses related to the Company's business. Reserve fund may be used to pay the initial capital.

§ 25

For a period of five years since the date of the Company's incorporation, the stockholders shall withhold from being paid the dividend, and the whole profit worked out by the Company shall be fully designated to the Company's statutory purposes.

§ 26

If profit has been generated in a certain fiscal year, the Board of Management may be awarded a bonus from the profit at the request of the Supervisory Board. The payment or withholding of payment of the bonus shall not infringe on the prerogatives of the Supervisory Board referred to in § 17 Point g of the Statute.

§ 27

1. The Company shall do financial accounting and reporting pursuant to the regulations prevailing in this respect.
2. The Company's fiscal year is the calendar year with the exception of the first turnover year that will end on 31st December, 2000.

Subject matter of exchange trading

§ 28

At the commodity exchange run by the Company the scope of trading may cover electricity, liquid and gaseous fuels, production limits including in particular electricity production limits and air emission limits, as well as proprietary rights with the value dependent directly or indirectly on prices of electricity, liquid or gaseous fuels, and production limits and air emission limits.

Exchange transactions

§ 29

An exchange transaction is the contract concluded at the energy exchange run by the Company pertaining to electricity, liquid or gaseous fuels, production limits, air emission limits as well as proprietary rights with the value dependent directly or indirectly on the value of electricity, liquid or gaseous fuels, production limits or air emission limits, compliant with the Giełda Energii Regulations.

Dissolution of the Company

§ 30

1. The dissolution of the Company shall be effected by:
 - a) a resolution of the General Meeting of Stockholders on the dissolution of the Company,
 - b) announcement of the Company's bankruptcy.
2. The Company shall be dissolved following a liquidation procedure.

§ 31

The Company shall publish its notices at *Monitor Sądowy i Gospodarczy*.