

## ARTICLES OF ASSOCIATION OF THE JOINT-STOCK COMPANY

### Polish Energy Partners S.A.

consolidated text

*(containing amendments resulting from (i) Resolution of the Executive Board made on 12th December 2006 and (ii)*

*Resolution no. 7/I/2007*

*of the Extraordinary General Meeting)*

## I. GENERAL PROVISIONS

### Article 1

1.1. The business name of the Company shall be: “Polish Energy Partners Spółka Akcyjna”.

The Company may use the abbreviated name:”Polish Energy Partners S.A.” and a distinguishable logo.

### Article 2

2.1. The Company’s registered office is in Warsaw.

2.2. Company founders:

a) Andrzej Chajec domiciled in Warsaw, at ul. Bukowińska 26/58, personal ID series DD number 0502273;

b) Polish Private Equity Fund I, with its head office at 375 Park Avenue, Suite -- 1902, New York, NY 10152, the United States of America;

c) Polish Private Equity Fund II, with its head office at 375 Park Avenue, Suite - 1902, New York, NY 10152, the United States of America;

Polish Private Equity Fund I, Polish Private Equity Fund II, and their shareholder Polish Enterprise Fund, LP., with its head office at 375 Park Avenue, Suite 1902, New York, NY 10152, the United States of America, are hereinafter referred to as “the Funds”. -

### Article 3

3.1. The Company shall run its business in the Republic of Poland and abroad.

3.2. The Company's life shall be unlimited.

3.3. Subject to provisions of Art. 12.2 (p), the Company may establish and run its branch offices, plants, affiliates, representative offices, as well as other organisational units, and participate in other companies or enterprises in the Republic of Poland and abroad.

## II. THE COMPANY'S CORE BUSINESS

### Article 4

4.1. The Company's core business is as follows:

- a) generation and distribution of electricity (Polish Classification of Economic Activities – PKD 40.10),
- b) generation and distribution of heat (steam and hot water) (PKD 40.30),
- c) general construction of buildings and civil engineering works (PKD 45.21),
- d) building installations (PKD 45.3),
- e) other credit granting (PKD 65.22.Z), apart from services requiring licenses or authorisations, or restricted to banks only,
- f) research and experimental development on natural sciences and engineering (PKD 73.10),
- g) development and selling of real estate (PKD 70.11.Z), -----
- h) management of real estate on a fee or contract basis (PKD 70.32),
- i) accounting and book-keeping activities (PKD 74.12.Z),
- j) architectural and engineering activities and related technical consultancy (PKD 74.20.A),
- k) business and management consultancy activities (PKD 74.14.Z),
- l) other commercial activity n.e.c. (PKD 74.84.B), -----
- ł) adult and other education n.e.c. (PKD 80.42.Z), -----

m) wholesale of solid, liquid and gaseous fuels and related products (PKD 51.51.Z).

4.2. If any of the above activities requires a license/authorisation issued by a competent authority, the Company shall obtain the license/authorisation before taking up such an activity.

### **III. SHARE CAPITAL AND SHARES.**

#### **Article 5**

5.1. The Company's share capital totals PLN 36,979,334.00 (PLN thirty-six million nine hundred seventy nine thousand three hundred thirty two) and is divided into shares of the nominal value PLN 2.00 (PLN two) per share, including: 2,213,904 series A shares; 2,304,960 series B shares; 515,256 series C shares; 566,064 series D shares; 1,338,960 series E shares; 544,800 series F shares; 683,376 series G shares; 288,000 series H shares; 856,704 series I shares; 3,835,056 series J shares; 1,640,688 series K shares; 3,144,624 series L shares; 182,359 series M shares; 69,922 series N shares; and 70,908 series O shares, 49,500 series P shares, and 37,560 series R shares. The series O and S shares shall be registered shares.

5.1a. The Company's shares capital was conditionally enlarged by PLN 179,000 by issue of 89,500 ordinary registered series P shares of nominal value PLN 2,00 (PLN two) per share. Series P shares will be issued by the Company in exchange for series I subscription warrants.

5.2. Each share carries one vote at the General Meeting of Shareholders.

5.3. The Company may issue registered shares and ordinary bearer shares.

5.4. At the request of any shareholder, the Company's Executive Board shall convert the shareholder's registered shares into bearer shares. Only fully paid up shares may be converted into bearer shares.

5.5. Share capital may be increased through issue of new shares or increase of nominal value of existing shares, on terms and conditions defined in a relevant resolution of the General Meeting of Shareholders. Current shareholders hold pre-emptive rights to new shares in proportion to the stake currently held.

5.6. deleted

5.7. Shares may be redeemed under a resolution of the General Meeting of Shareholders upon consent of the shareholder whose shares are to be redeemed (voluntary redemption). To redeem shares, reduction of share capital is required. In exchange for redeemed shares, a shareholder shall receive an amount equal to the value of redeemed shares, as defined in a resolution of the General Meeting of Shareholders.

5.8. deleted

5.9. The Executive Board is authorised to increase the Company's share capital (one-time increase or several times) by the total amount up to PLN 716,000.00 (in words: PLN seven hundred sixteen thousand) by issuing up to 358,000 (in words: three hundred fifty-eight thousand) ordinary registered shares on the following terms:

- 1) the authorisation shall be valid for 3 years as of the date of registration of this amendment of the Company's Articles of Association in the Register of Entrepreneurs;
- 2) issue price of one share issued within the limits of the target capital shall be equal to the price paid for one share in the public offering of the Company's shares. If the public offering of the Company's shares is not carried out before the end of 2005, the issue price of shares issued within the limits of the target capital will be set by the Executive Board

upon the Supervisory Board's consent. While taking over shares, an eligible person shall pay a minimum amount of the issue price as defined in the Code of Commercial Companies. The remaining amount shall be payable no later than 5 days before the date of submission of a request for admission of shares to public trading on the Warsaw Stock Exchange.

3) shares issued within the limits of share capital may be taken over in exchange for a cash contribution;

4) the Supervisory Board may adopt relevant regulations to define detailed terms and conditions which must be satisfied in order to increase the Company's share capital within the limits of the target capital;

5) Upon the Supervisory Board's consent, the Executive Board may cancel pre-emptive rights held by existing shareholders (entirely or partially) and offer shares issued within the limits of the target capital to members of the Executive Board, Supervisory Board, or employees of the Company or any of its subsidiaries, or to persons working or providing services for these entities under any other agreement, as per detailed terms and conditions to be defined in regulations adopted by the Supervisory Board.

5.10. Authorisation of the Executive Board to increase the Company's share capital within the limits of the target capital, referred to in Art. 5.8 and 5.9 of the Articles of Association, includes the issue of subscription warrants.

#### **Article 6**

The Company's shares are transferable.

### **IV. THE COMPANY'S AUTHORITIES**

#### **Article 7**

The Company's authorities are:

1. Executive Board;
2. Supervisory Board; and
3. General Meeting of Shareholders.

## **A. EXECUTIVE BOARD**

### **Article 8**

8.1. The Company's Executive Board consists of one to five members, including the President and Vice-President. The term of office of the Executive Board is 3 (three) subsequent years, except for the first Executive Board with the term of office of 1 (one) year. Members of the Executive Board shall not be appointed for the joint term of office.

8.2. Apart from the first Executive Board appointed by the Company's founders, the Executive Board shall be appointed by the Supervisory Board; the Supervisory Board also defines the number of Executive Board members for each term of office, as per Art. 8.1 hereof.

8.3. The Supervisory Board may recall and suspend one or all members of the Executive Board before the end of its term of office.

### **Article 9**

9.1. The task of the Executive Board is to manage the Company's business and represent the Company in contacts with third parties.

9.2. The Executive Board shall be competent in all matters related to the Company management not restricted to competencies of the General Meeting of Shareholders or the Supervisory Board by provisions of the Act or these Articles of Association. Before taking any action which requires authorisation or approval of any other authority of the Company, the Executive Board shall obtain such an authorisation or approval. --

9.3. Detailed procedures of Executive Board shall be defined in detail in its Bylaws. Executive Board Bylaws shall be adopted by the Supervisory Board.

9.4. If the Executive Board is composed of more than one member, statements of will shall be made and any documents shall be signed for and on behalf of the Company by two Executive Board members jointly or by one Executive Board member with an authorised representative (proxy).

9.5. The task of the President of the Executive Board is to manage works of the Executive Board, and in particular to convene and chair the Executive Board meetings, define the agenda of these meetings, call for vote in writing on terms and conditions defined in the Executive Board Bylaws, and co-ordinate work of individual members of the Executive Board within the scope of responsibilities defined in the Executive Board Bylaws.

9.6. Resolutions shall be adopted by the Executive Board with the absolute majority of votes; in the case of an equal number of votes for and against a resolution, the casting vote is exercised by the President of the Executive Board.

## **B. SUPERVISORY BOARD.**

### **Article 10**

10.1. The Supervisory Board consists of five or six members. The number of the Supervisory Board members for a given term of office is determined by the General Meeting of Shareholders.

10.2 The Supervisory Board members are appointed and recalled based on the following procedure:

a) shareholder holding shares representing at least 33% of the Company share capital shall appoint and recall two members of the Supervisory Board, including its Chairperson. If more than one shareholder holds shares representing at least 33% of the Company share capital, Chairperson of the Supervisory Board shall be appointed by a shareholder holding the largest block of shares;

b) other Supervisory Board members are appointed and recalled by the General Meeting of Shareholders.

### **Article 11**

11.1. The term of office of the Supervisory Board shall be 3 (three) subsequent years, except for from the first Supervisory Board with the term of office of 1 (one) year. Members of the Supervisory Board shall not be appointed for the joint term of office.

11.2. The Supervisory Board acts based on its Bylaws adopted by the General Meeting of Shareholders.

11.3. Deputy Chairperson of the Supervisory Board shall be elected by the Supervisory Board from among its members.

11.4. Meetings of the Supervisory Board are convened and chaired by the Supervisory Board Chairperson, and if the latter is absent –by his/her Deputy. The first meeting of a new Supervisory Board is convened and chaired by the Chairperson of the previous Supervisory Board.-----

11.5. Meetings of the Supervisory Board may be either Ordinary or Extraordinary. Ordinary meetings of the Supervisory Board shall be held at least four times a year (once every quarter). Extraordinary meetings may be convened at any time.

11.6. Meetings of the Supervisory Board are convened by the Supervisory Board Chairperson or Deputy Chairperson of their own initiative or upon the written request of the Company’s Executive Board or any member of the Supervisory Board. The Supervisory Board meeting should be held within 2 (two) weeks after a relevant request is submitted.

11.7. Supervisory Board meetings shall be convened in the manner provided for in the Bylaws of the Supervisory Board.



11.8. Supervisory Board meetings may be held by phone, on condition that all members participating in such a meeting are able to communicate with one another. Resolutions adopted at such a meeting shall be valid on condition that all members of the Supervisory Board are notified of the text of such a resolution, and each participating member of the Supervisory Board signs the attendance list and minutes from the meeting. If this is the case, it is assumed that the venue of this meeting (where its minutes are drawn up) is the place from where the Chairperson of the Supervisory Board, or – if the latter is absent – his/her Deputy (if the meeting was chaired by the Deputy), participated in the meeting.

11.9. Within the limits of the law, resolutions of the Supervisory Board may be adopted by vote in writing called by the Chairperson or – if the latter is absent – his/her Deputy, on condition that all members of the Supervisory Board approve the text of such a resolution or agree to the vote in writing. The date of such a resolution is the date when the resolution is signed by the Chairperson or his/her Deputy, if the latter called for a vote in writing.

11.9a. Subject to exceptions provided for by law or the Company's Articles of Association, members of the Supervisory Board may participate in adopting resolutions, casting their votes in writing through the agency of other member of the Board.

11.10. For a Supervisory Board meeting and resolutions adopted thereat to be valid, all members of the Supervisory Board must be invited to the meeting, as per Art. 11.7 hereof, and at least 3 (three) members must be present.

## **Article 12**

12.1. The task of the Supervisory Board is to supervise the Company's business on an on-going basis.

12.2. Apart from other matters restricted by provisions of the law or these Articles of Association, the Supervisory Board is in particular authorised to:

- a) analyse the Company's financial statement for the previous fiscal year;
- b) give its opinion on the report and conclusions of the Executive Board as regards distribution of profits (including payment of dividend) or offset of losses, as well as draft resolutions proposed by the General Meeting of Shareholders and other important documents presented to shareholders in relation to the General Meeting;-----
- c) analyse and approve annual operating and financial plans of the Company (“**the Company's Budget**”) and related to individual Projects (“**Project Budget**”), as well as any significant changes thereof, and request for detailed reports as regards their implementation from the Executive Board;  
“**Project**” means a company, business activity, or enterprise related to generation, transmission or distribution of electricity or heat, as well as supply, trade or distribution of fuel, where the Company is a shareholder, investor, developer, or manager;
- d) analyse and approve strategic plans related to the Company's development;
- e) present a written report at the General Meeting of Shareholders on the results of actions referred to in subsections (a), (b) of this Article 12.2;
- f) appoint, recall and suspend individual members of the Executive Board, President of the Executive Board, or the entire Executive Board;
- g) determine the number of Executive Board members for the next term of office;
- h) determine remuneration and other benefits received by members of the Executive Board;
- i) delegate member(s) of the Supervisory Board to perform duties of the Executive Board on a temporary basis, if the entire Executive Board or a member of the Executive Board is recalled or suspended, or otherwise unable to perform their respective duties;
- j) approve any sale, lease, exchange, or any other transfer of the Company's assets, including the Company's interest in any Project, either in one transaction or a number of related transactions, whose market value exceeds the equivalent of USD 100.000 (one hundred thousand) converted into PLN at the average exchange rate set by the President of the National Bank of Poland on the date of transaction (“**Exchange Rate**”);

k) approve any credits taken out by the Company, loans granted or incurred by the Company, or any other borrowings except for (i) trade payables incurred in the course of ordinary operations, (ii) taxes not yet payable, (iii) short-term payables arising from other obligations where the amount payable not included in the Company's approved budget does not exceed the equivalent of USD 250.000 (two hundred fifty thousand) converted into PLN at the Exchange Rate;

l) approve any expenditure in excess of the amount equal to USD 100,000.00 (one hundred thousand) converted into PLN as at the Exchange Rate, in one transaction or a series of related transactions, save for amounts approved and specified in the Company's approved annual budget, or made in the course of ordinary operations, provided that investment outlays are not understood as expenditure made in the course of ordinary operations;

m) approve the Company's participation in any legal transaction if any of the following entities is the other party to such legal transaction:

i) any entity where the Company holds shares or interest (either directly or indirectly), unless the Company holds 100% (one hundred per cent) of share capital of such an entity;

ii) member of the Company's Executive Board;

iii) member of the Company's Supervisory Board;

n) approve any partnership, registered partnership, or limited liability partnership agreement concluded by the Company, interest in profits or revenues, or any other similar agreement based on which the Company's revenues or profits are or may be shared with other entities or persons;

o) to approve establishment of branch offices and subsidiaries by the Company, acquisition or take-over of shares in other companies, as well as entering into partnership agreements;

p) approve any sureties or guarantees granted by the Company, or any encumbrances on the Company's assets in each case when the total amount of these sureties, guarantees, or encumbrances is or would be in excess of the amount equal to USD 100,000.00 (one hundred thousand) converted into PLN as at the Exchange Rate, unless such encumbrances are included in the Company's approved budget;

- q) appoint or change the Company's certified auditor;
- r) approve the conclusion, significant amendment, or cancellation of any agreement related to supply of power services, purchase of energy, management of facilities, lease, turn-key works and deliveries, maintenance and operation of equipment, credits and loans, supplies of fuel, and any other Project-related agreements with the Company as a party thereto, including any changes in orders arising from contracts for supply and turn-key works, unless included in the Company's approved budget;
- s) approve Project financing terms and conditions and any significant changes thereof;
- t) approve significant changes in accounting principles adopted by the Company;
- u) approve any acquisition or sale of any real estate, perpetual usufruct of or share in any real estate made by the Company, unless included in the Company's approved budget or Project budget.

### **Article 13**

13.1. Members of the Supervisory Board shall execute their rights and carry out their duties in person. -----

13.2. Remuneration of the Supervisory Board members is determined by the General Meeting.

13.3. The Supervisory Board may delegate one or more of its members to carry out supervisory tasks on an individual basis.

13.4. Each member of the Supervisory Board may request for any information about the Company from the Supervisory Board, or request the Supervisory Board to analyse any information about the Company.

#### **Article 14**

The Supervisory Board shall adopt its resolutions with a simple majority of votes. In case of equal number of votes cast for and against a resolution, the casting vote is exercised by the Chairperson of the Supervisory Board, and if the latter is absent, by the Deputy Chairperson of the Supervisory Board.

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

#### **Article 15**

15.1. A General Meeting of Shareholders may be either Annual or Extraordinary.

15.2. Annual General Meeting of Shareholders shall be held no later than within 6 (six) months after the end of the Company's fiscal year.

15.3. Extraordinary General Meeting of Shareholders shall be convened by the Company's Executive Board of its own initiative or upon a written request of the Company's Supervisory Board, Chairperson of the Supervisory Board, or shareholders representing at least 10% (ten per cent) of the Company's share capital.

15.4. Extraordinary General Meeting of Shareholders shall be convened within 3 (three) weeks after the request referred to in Art. 15.3. is submitted.

15.5. Extraordinary General Meeting of Shareholders shall be convened by at least 1 (one) member of the Supervisory Board:

a) if the Extraordinary General Meeting of Shareholders is not convened by the Executive Board within the period referred to in Art. 15.2; or

b) if, despite submitting the request specified in Art. 15.3 the Extraordinary General Meeting of Shareholders is not convened by the Executive Board within the period referred to in Art. 15.4.

15.6. deleted

### **Article 16**

16.1. General Meeting of Shareholders may adopt resolutions only in matters covered by the agenda, unless the entire share capital is represented at the Meeting and none of the participants is against such a resolution.

16.2. The Supervisory Board and shareholders representing at least 10% (ten per cent) of share capital may request to add certain matters to the agenda of the next General Meeting of Shareholders.

16.3. If the request referred to in Art. 16.2 is filed after the convention of a General Meeting of Shareholders has been announced, it shall be treated as a request to convene an Extraordinary General Meeting of Shareholders.

### **Article 17**

General Meetings of Shareholders shall be held in Warsaw, and the venue shall be defined in the announcement.

### **Article 18**

18.1. Unless otherwise specified in provisions of the Code of Commercial Companies, a General Meeting of Shareholders may adopt resolution regardless of the number of shareholders actually present at the meeting or the number of shares represented at the meeting.

18.2. deleted.

### **Article 19**

19.1. Resolutions of a General Meeting of Shareholders shall be adopted by simple majority of votes cast by shareholders present at the Meeting, unless otherwise specified herein or in other regulations currently in effect.

19.2. In the event specified in Art. 397 of the Code of Commercial Companies, a resolution to dissolve the Company requires the majority of 3/4 (three quarters) of votes.

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### **Article 20**

20.1. In particular, the General Meeting of Shareholders is entitled to:

- a) analyse and approve the Executive Board's report and the Company's financial statement;
- b) discharge the Supervisory Board and Executive Board for due performance of their duties; -----
- c) adopt resolutions on the distribution of profits or offset of losses;
- d) create and reverse special-purpose funds;
- e) define rules and amount of remuneration paid to Supervisory Board members;
- f) change of the Company's core business;
- g) amend the Company's Articles of Association;
- h) increase or reduce the Company's share capital;
- i) approve any business combination or transformation;
- j) approve the dissolution and liquidation of the Company;
- k) approve any issue of bonds, including convertible bonds;
- l) select liquidators;
- m)-----all decisions in respect of claims for repairing damage suffered through the formation of the company or exercise of management or supervision;

- n) sell the Company's enterprise or its essential part;
- o) analyse matters referred to the General Meeting by the Supervisory Board, Executive Board, or shareholders. -----

20.2. Apart from matters referred to in Art. 20.1, resolutions of the General Meeting of Shareholders must be taken for other matters provided for by the law or the Company's Articles of Association.

20.3. Motions on matters requiring approval of the Supervisory Board (as provided for herein) shall be submitted along with a written opinion of the Supervisory Board.

20.4. Acquisition or sale of any real estate, perpetual usufruct of or share in a real estate requires no approval of the General Meeting of Shareholders.

### **Article 21**

21.1. Voting at the General Meeting of Shareholders is open.

Confidential vote is called for during elections and in the case of motions as regards dismissal of members of the Company authorities or its liquidators, their liability, and any personal matters, as well as at the request of at least one shareholder present at the Meeting. -----

21.2. Resolutions regarding any change of the Company's core business shall be adopted in an open roll-call vote.

## **V. THE COMPANY'S MANAGEMENT**

### **Article 22**

The Company's organisation is defined in Bylaws adopted by the Executive Board.



### **Article 23**

23.1. To offset balance sheet losses, the Company shall establish a reserve capital. Annual write-offs to reserve capital shall be made in the minimum amount of 8% (eight per cent) of net annual profit, until reserve capital reaches 1/3 (one-third) of the Company's share capital.

23.2. The Company may establish other capital reserves or special-purpose funds to cover individual expenses or losses. These reserves or funds, created from the Company's profit, may be paid to shareholders.

23.3. Pursuant to provisions of the Code of Commercial Companies, net profit made by the Company may be earmarked for a dividend paid to shareholders or shall remain undistributed, pursuant to a relevant resolution of the General Meeting of Shareholders, and transferred to reserve capital or other reserves, or earmarked for other purposes defined in a resolution of the General Meeting of Shareholders. -----

23.4. The General Meeting of Shareholders shall adopt a resolution defining a date as of which a list of shareholders entitled to receive a dividend for given fiscal year is determined.

23.5. deleted.

### **Article 23a**

The Company's Executive Board shall be entitled to pay an advance payment to shareholders on account of an expected dividend, under provisions of the Code of Commercial Companies. Advance payment must be approved by resolution of the Supervisory Board. The Company's Executive Board may pay advance payments on account of dividends using reserve capitals established from profits made by the Company and earmarked for the payment of dividends.

## **Article 24**

24.1. The Company's fiscal year is the calendar year. The Company first fiscal year ended on 31 December 1998.

24.2. The Company shall run its accounts as per regulations in effect in the Republic of Poland.

24.3. Within 5 (five) months after the end of the financial year, the Executive Board shall draw up a balance sheet as at the last day of the year, profit and loss account, cash flow statement, and additional information (Notes), as well as a detailed written report on the Company's business in the previous financial year; the said documents shall be verified by certified auditors designated by the Supervisory Board, and submitted to the Supervisory Board.

24.4. Within the limits set by the law and a relevant resolution of the Supervisory Board, the Executive Board shall draw up monthly statements to be submitted to each member of the Supervisory Board within 28 (twenty-eight) days after the end of each calendar month.

24.5. The Executive Board shall draw up annual budgets. The Executive Board shall submit a budget for the next financial year to the Supervisory Board for approval not later than within 15 (fifteen) days before the end of the preceding financial year.

24.6. If, under provisions of the Law on Public Trading of Securities, the Executive Board publishes a current report on any extraordinary changes in the Company's financial standing or legal situation, or any significant breach of any agreement signed by the Company, the Executive Board shall immediately notify the Supervisory Board thereof.

