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Draft

**Resolution No. ...
of 28 October 2019
of the Extraordinary General Meeting of Shareholders
of Elektrociepłownia „Będzin” S.A.
on the rules for the disposal of non-current assets**

Acting pursuant to Article 17 (4) of the Act of 16 December 2016 on the Rules for Managing State Property and § 5 (2) of Resolution No. .../2019 of the Extraordinary General Meeting of Elektrociepłownia Będzin S.A. of 28 October 2019 on the rules of procedure regarding the disposal of non-current assets and conducting certain legal transactions and complying with the requirements of the Act of 16 December 2016 on the Rules for Managing State Property in companies for which Elektrociepłownia „Będzin” S.A. is a dominant undertaking, the General Meeting resolves as follows:

§ 1

The disposal of non-current assets within the meaning of the Accounting Act of 29 September 1994 (hereinafter referred to as “non-current assets”), with a market value exceeding 0.1% of the total assets within the meaning of the Accounting Act of 29 September 1994, determined on the basis of the last approved financial statements, unless the market value of those assets is lower than PLN 20 000, shall take place either by a tender or by auction, in accordance with the rules set out in § 2 - § 6 and § 9, subject to the exceptions referred to in § 7.

§ 2

The rules for the disposal of non-current assets shall be as follows:

- 1) a notice of invitation to tender or auction shall be published on the Company’s website. Additionally, a shorter version of the notice may be published in the press or other media;
- 2) a notice of invitation to tender or auction shall specify at least:
 - a) the Company's business name, registered office and address,
 - b) date, place and form of a tender or auction procedure,
 - c) date and place where the non-current assets subject to disposal can be inspected,
 - d) information about the non-current assets subject to disposal,
 - e) value of the net starting price, bid security and minimum bid increment for an auction,
 - f) date and method for paying the bid security, its value and information referred to in Points 8) -10),
 - g) place, date and manner of bid submission and the period for which the bid is binding, as well as the information referred to in § 3 (1) and § 6 (2),

- h) depending on the mode of disposal – instruction stipulated in § 5 (6) and § 6 (4) and (7),
 - i) instruction about the obligation to inspect the physical and legal status of the disposed non-current asset,
 - j) information that, at each stage throughout the procedure, the Company shall be entitled to annul the procedure and close it without providing reasons,
 - k) instruction about consequences of evading the conclusion of the sales contract by a successful tenderer or auction participant,
 - l) information that in the case of natural person taking part in a tender or auction procedure, such person shall be obliged to file a written declaration of consent to the processing of its personal data for the purposes of the tender or auction,
 - m) information that the conclusion of the sales contract shall be subject to the Company obtaining the relevant corporate approvals, along with the instruction about the buyer's obligation to file a declaration that if the tender or auction procedure is closed and his bid is selected, and subsequently, the aforementioned approvals are refused, the buyer shall not bring any claims against the Company related to the failure to conclude the sales contract,
 - n) other information regarded by the Company as important;
- 3) a tender or auction cannot take place earlier than after 14 days from the date of notice of invitation to tender or auction;
 - 4) activities related to a tender or auction shall be carried out by a Committee whose members are to be selected by the Management Board of the Company;
 - 5) bidders in a tender or auction procedure cannot include:
 - a) members of the Company's Management Board and its supervisory body and proxies,
 - b) persons who have been entrusted with the performance of activities related to the tender or auction procedure,
 - c) spouse, children, parents and siblings of the persons referred to in Points a)-b),
 - d) persons who are in such a legal or factual relationship with the person carrying out the tender or auction procedure that it may raise reasonable doubts as to the impartiality of such person carrying out the procedure;
 - 6) participation in a tender or auction procedure shall be subject to payment of a bid security in the amount set by the Company's Management Board, but no lower than 5% of the starting price of the disposed non-current asset, to the bank account and by the deadline specified in the notice of invitation to tender or auction;
 - 7) immediately after the opening of bids or immediately before conducting the auction, the person carrying out the tender or auction procedure shall verify whether the participants have paid the bid security in the appropriate amount;
 - 8) the bid security shall be forfeited to the Company if none of the auction participants offers the starting price, and also if the bidder in a written tender (when the disposal of a non-current asset requires a special form), whose offer is chosen, fails to proceed with the conclusion of the sale contract;
 - 9) the bid security paid by the bidders whose offers have not been accepted shall be subject to refund within up to 7 business days after selecting the bid;
 - 10) the bid security paid by the buyer shall be applied towards the price;

- 11) the Company shall immediately notify the tender participants in writing about its results or about the closing of the tender without making a selection.

§ 3

1. Before starting a tender or auction procedure, the Company shall establish the starting price of non-current assets. The starting price cannot be lower than the current market value determined by expert appraisers, subject to Point 2, and if it is impossible to determine such value, the price cannot be lower than the net book value.
2. The Company may refrain from the valuation of the disposed non-current asset by an expert appraiser if:
 - 1) the cost of its valuation would clearly exceed its market value;
 - 2) the non-current asset has a fixed stock market price.
3. The sale cannot be completed at a price lower than the starting price.
4. Submission of one valid bid shall be sufficient to complete a tender or auction procedure.
5. If the subject of the sale is a non-current asset, the sale of which requires a special form, the Company, after the end of the tender or auction, shall set a deadline for concluding a contract in the form prescribed by law and call the person who has won the tender or auction to appear in order to conclude the sales contract.
6. The Buyer shall pay the price no later than within a period of 14 business days from the date of the contract. In the case of the sale of real estate, the buyer shall pay the price at the time of conclusion of the sales contract at the latest; however, it shall be allowed to pay the price at the aforementioned time to the deposit account of the notary public drafting the notarial deed containing the sales contract.

§ 4

1. The procedure regarding the disposal of non-current assets shall be carried out in the following forms:
 - 1) tender;
 - 2) auction.
2. The choice of the form, referred to in Point 1, shall be made by the Company by way of a resolution of the Management Board.
3. The person carrying out the procedure may, at any time before the completion of the procedure, and in particular in the event of a breach of the provisions hereof, withdraw from completing it or annul it.

§ 5

1. A bid submitted in a tender procedure should contain:
 - 1) forename, surname and address or (business) name and registered office of the bidder;
 - 2) the price offered and financing method;
 - 3) the bidder's declaration and documents as per the content of the notice of invitation;
 - 4) confirmation of payment of the bid security,
 - 5) other information and documents referred to in the Notice of invitation.



**Extraordinary General Meeting of Shareholders
28 October 2019**

2. The bid, along with the required documents, shall be submitted in a sealed envelope at the place and time specified in the tender notice. The bid and the documents attached thereto shall be submitted in Polish.
3. The person carrying out the tender procedure shall open the bids and confirm that their integrity has not been compromised, and furthermore, such person shall determine which of them shall be considered valid in accordance with applicable provisions and whether the bidders have paid the required bid security, and then select the bidder who has offered the highest price.
4. If it is established that several bidders have offered the same price, the person carrying out the tender procedure shall notify the bidders about the date and place of continuation of the procedure in the form of auction; however, if all bidders who will participate in the auction are present, the person carrying out the procedure may continue it in the form of auction on the same day.
5. It shall be allowed to conduct additional oral negotiations with bidders who have offered similar prices, after which the bidders shall be invited to submit new bids.
6. Minutes shall be drawn up of the course of the tender procedure.

§ 6

1. The auction shall be conducted by a member of the Committee, hereinafter referred to as the "auctioneer".
2. When conducting the auction, the auctioneer shall inform about the subject of the auction and its starting price.
3. The minimum bid increment cannot be lower than: 0.5% of the starting price, rounded up to full tens of zlotys or 100 000 zlotys.
4. Upon the cessation of bidding, the auctioneer – after letting those present know – shall close the auction after the third bid announcement and grant bid acceptance to the highest bidder. The auction shall be considered completed if at least one participant has offered the starting price.
5. Upon the bid acceptance a sales contract shall be concluded unless the subject of the sale is a non-current asset, the sale of which requires a special form. In such a case, upon the bid acceptance the parties shall be deemed obliged to conclude the sales contract and each of the parties shall be entitled to seek its conclusion before the court, unless otherwise stipulated in the terms of the auction. If the subject of the sale is a non-current asset, the sale of which does not require a special form, the contract shall be concluded, with granting the seller the right to withdraw from the contract if the sales price is not paid within the time limit referred to in § 3 (6), and the right of withdrawal may be exercised within 5 business days from the ineffective expiry of the price payment deadline.
6. The buyer failing to pay the purchase price within the time limits specified hereinabove shall lose the rights resulting from the bid acceptance and the bid security paid, as per the rules specified hereinabove.
7. The subject of sale shall be released to the buyer immediately after the purchase price is paid.
8. The auctioneer shall draw up minutes of the auction procedure, including:
 - 1) identification of the auction date and place;

- 2) forename and surname of the auctioneer;
 - 3) subject of the auction and starting price amount;
 - 4) list of auction participants with the specification of both value and type of the bid security provided;
 - 5) forename, surname and address of residence or business name and registered office of the buyer;
 - 6) price offered by the buyer for the non-current asset;
 - 7) the amount which the buyer has paid towards the price;
 - 8) requests and declarations made by the auction participants;
 - 9) mention of the minutes having been read in the presence of the auction participants;
 - 10) signature of the auctioneer and the buyer or a note regarding reasons for the lack of the buyer's signature;
 - 11) in the absence of bids, information that nobody has submitted a bid and the auction procedure has ended.
9. If the buyer fails to pay the purchase price within the prescribed time limit, this fact should be immediately taken note of in the minutes of the auction. The note should be also taken when the purchase price is paid within the prescribed time limit.
10. The date on which the minutes are drafted shall be considered the day of the auction completion.

§ 7

The Company may sell non-current assets without carrying out a tender or auction procedure in the following cases:

- 1) For a price not lower than 2/3 of the starting price in the case of real estate and not lower than the starting price in the case of other non-current assets, when no bid has been submitted in response to the previous invitation to tender. In each case, it shall take place with the consent of the Supervisory Board and on the terms approved by it.
- 2) The asset is disposed of to the Treasury, local government units or their affiliates within the meaning of the Act of 16 February 2007 on Competition and Consumer Protection.
- 3) The sale takes place on the basis of exchange.
- 4) The non-current asset is to constitute a non-cash contribution to the company or cooperative.
- 5) The subject of the sale is a share and it is to be sold to other shareholders.
- 6) The sale is made for a public purpose investment.
- 7) The subject of the sale is real estate or a part thereof, if they cannot be developed as separate real estate.
- 8) The sale takes place as part of liquidation proceedings, according to the rules set out in a resolution of the General Meeting and subject to separate provisions.
- 9) The sale relates to specific non-current assets, the rules for disposal of which result from separate legal provisions.
- 10) The sale takes place in the exercise of pre-emptive or priority rights; however, provided that in such a case the sales price must be determined by way of a tender or auction carried out in accordance with the rules set out herein.



**Extraordinary General Meeting of Shareholders
28 October 2019**

11) In justified cases, when the subject of the sale is a non-current asset of a special nature, subject to the prior consent of the General Meeting to refrain from a tender or auction procedure.

§ 8

The General Meeting authorises the Company's Management Board to adopt and introduce Regulations on the disposal of non-current assets, setting out detailed rules for the disposal of non-current assets by the Company, including in particular those regarding the selection and rules of procedure of the Committee, annulment of the procedure, supplementation offers, cooperation with real estate agents, obtaining relevant corporate approvals for the disposal of non-current assets.

§ 9

The existing rules adopted at the Company within the scope covered by the Resolution shall apply to the disposal of non-current assets with respect to which the procedure was completed and resolved before the date of entry into force of this Resolution.

§ 10

The resolution shall come into force on the date of its adoption.

Number of members present at the Meeting:

Number of votes cast in favour of the adoption of the resolution:

Number of votes cast against:

Number of abstentions: