Responses to questions posed to the
Management Board of Zakłady Azotowe w Tarnowie-Mościcach S.A. (the Company)
pursuant to art. 428, § 1 of the Polish Commercial Companies Code
during the Extraordinary General Meeting on 15 March 2013

Question 1

Why has the Management Board proposed amendments to art. 47 of the Articles of Association? What is the Company’s interest in further limiting the rights of shareholders other than the State Treasury through introducing a more restrictive aggregation and reduction mechanism?

Response

The Management Board believes that the proposed amendments to the Articles of Association do not limit shareholder rights but rather expand on current provisions through clarifying the rules for reduction in order to alleviate doubts about the means of its implementation.

Question 2

Why does the Management Board want to expand on the definition of parent company/subsidiary relationship beyond what is indicated in the Polish Commercial Companies Code? What is the Company’s interest in this amendment? It presents an additional hindrance for shareholders and means that they must incur the additional due diligence costs in order to be sure whether there is actually a parent company/subsidiary relationship between them and other entities in the meaning of a wide range of very details regulations. This is an issue particularly for foreign shareholders and institutional investors from international groups of companies, since it requires detailed analysis of the specific definitions contained in numerous pieces of legislation, on pain of being practically deprived of the right to vote.

Response

The Management Board’s intention was to minimise the risk that, despite the possibility to exert a decisive influence or similar effect on another entity being the Company’s shareholder or on the activities of such entity, a specific entity would not be subject to the aggregation and reduction mechanism.

Furthermore, the Management Board has neither sufficient competences nor the resources to monitor relations between the Company’s shareholders and entities associated with them. At the same time, the requirement to confirm a Company shareholder’s equity and organisational ties should rest with the shareholder, since only shareholders have full and exhaustive information on their own corporate and capital structures.

Question 3

Who decides on whether a shareholder has correctly fulfilled the obligation to provide the information proposed by the Management Board? For instance, in a situation where before or even during a general meeting one shareholder asks another shareholder if it has a parent company/subsidiary relationship with another foreign entity in the meaning of e.g. the Polish accounting act – can the Management Board reduce the number of votes held by such shareholder or group of shareholders to 1 in a situation where it believes that the response given by the shareholder is insufficient/false?

Response

The amendment to § 47 of the Articles of Association, adopted through resolution no. 10 of the Extraordinary General Meeting of 15 March 2013, does not contain provisions enabling presentation by a Company shareholder of a demand that another shareholder provides information on its capital/corporate structure. Neither do the Articles of Association govern actions to be taken in a situation where a shareholder presents such demand. If there are any doubts about the above, the Management Board will make a ruling in each instance pursuant to the specific circumstances, with consideration to generally binding legal regulations.

Question 4

What if a shareholder’s proxy or attorney is not in a position to provide a detailed response to a question posed during the general meeting (e.g. cannot state whether the shareholder’s parent company is in a parent company/subsidiary relationship in the meaning of the Polish accounting act in relation to another company
which is not even a shareholder of Zakłady Azotowe w Tarnowie-Mościcach S.A.)? Can the Management Board then reduce the number of votes at the general meeting held by the shareholder to 1 vote?

Response

The approved amendments to the articles of association do not govern actions to be taken in a situation where a shareholder presents a demand for explanation of another entity’s parent company/subsidiary relations. If there are any doubts about the above, the Management Board will make a ruling in each instance pursuant to the specific circumstances, with consideration to generally binding legal regulations.

Question 5

What does this provision mean: “Within the meaning of this paragraph, a shareholder is understood as any person, including its parent company or subsidiary, which directly or indirectly carries the right to vote at the General Meeting on the basis of any legal title; this also relates to persons not holding any shares in the Company”? What is the point of this provision in a situation where it simultaneously introduces such a wide definition of parent company/subsidiary relations, even including acting in concert (which incidentally the shareholder believes is contrary to art. 411 of the Polish Commercial Companies Code)?

Response

Paragraph 47 of the Articles of Association uses the term shareholder in a broad sense, exceeding the traditional definition of persons or entities which hold shares in the Company. In accordance with the new wording of § 47 of the Articles of Association, a Company shareholder is not just an entity which holds shares but also for instance an entity which has disposed of shares after the date for registering attendance at the general meeting and which may exercise the right to vote during the meeting despite not holding any shares in the Company. The Management Board’s intention is for § 47 to cover both entities which hold shares and entities which have the right to vote even if they do not hold shares.

Question 6

What does this provision mean: “In the event of doubts arising in connection with this paragraph, its content should be interpreted in accordance with art. 65, § 2 of the Act of 23 April 1964, the Polish Civil Code”? Art. 65.2 of the Polish Civil Code states that: “In contracts and agreements, the mutual intent of the parties and objective of the contract or agreement should be analysed rather than drawing on the literal wording.” What is “mutual intent of the parties” supposed to be in this instance? Who does this specify? Is the Management Board supposed to do this? Does the provision proposed by the Management Board mean the Management Board taking a position that, with regard to the other provision of the Articles of Association, the “mutual intent of the parties” should not be analysed and art. 65.2 of the Polish Civil Code should not be applicable? The Supreme Court has already ruled that the Articles of Association of a public limited company (spółka akcyjna) should be interpreted in an objective manner since it is impossible to establish the mutual intent of the parties – hence what does the Management Board intend to establish?

Response

Art. 65, § 2 of the Polish Civil Code specifies general interpretational guidelines which should be applied by economic operators. The Management Board believes that, in the event of it being necessary to interpret the provisions of § 47 of the Articles of Association, attention should be paid to the objective of the provision and also the mutual intent of the parties, i.e. the intention of shareholders voting for adoption of the amendments to § 47 of the Articles of Association.