

# Articles of Association of Hamburger Hafen und Logistik Aktiengesellschaft

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as amended on June, 2017

- 1 General Provisions
- 1 Nominal Capital and Shares
- 4 Constitution of the Company
- 8 Financial Year and Annual Financial Statements
- 9 Connections to the Free and Hanseatic City of Hamburg
- 9 Announcements
- 9 S-Division

## I. General Provisions

### Art. 1 — Company, Registered Office

(1) The name of the Company is “Hamburger Hafen und Logistik Aktiengesellschaft”.

(2) The Company has its registered office in Hamburg.

### Art. 2 — Object of the Company, Corporate Purpose

(1) The object of the Company is to manage and participate in companies which are active in the economic sectors of sea transport, particularly in the container, intermodal and logistics business fields. The Company may also acquire, maintain, sell, lease, manage and develop real estate which is not specific to transshipment, particularly real estate in Hamburg’s historical Speicherstadt warehouse district and its fish market.

(2) The part of the Company which is concerned with acquiring, maintaining, selling, leasing, managing and developing real estate which is not specific to transshipment, particularly real estate in Hamburg’s historical Speicherstadt warehouse district and its fish market (Real Estate subgroup), is described in Article 31 of these Articles of Association and named the “S division”. All other parts of the Company (Port Logistics subgroup) are known as the “A division” in these Articles of Association.

(3) The Company is authorized to become active itself in all areas mentioned in Paragraph 1, to found and to acquire companies in Germany and abroad, to participate in such companies on its own or together with third parties, to sell such companies in whole or in part, to conclude cooperation agreements with third parties and to outsource parts of its business activities to companies in which it has a holding. The Company is also authorized to carry out all auxiliary transactions and ancillary business related to the object of the Company.

(4) The business activity of the Company and of its subsidiaries in the S division is performed having special regard for the interests of municipal development, tourism and the preservation of historical monuments.

## II. Nominal Capital and Shares

### Art. 3 — Nominal Capital; Types of Shares; Corporate Divisions

(1) The nominal capital of the Company amounts to € 72,753,334.00 (in words: seventy two million, seven hundred and fifty three thousand, three hundred thirty four euros).

(2) The nominal capital is divided into 72,753,334 no-par-value shares, including 70,048,834 Class A shares and 2,704,500 Class S shares (types of shares).

(3) Pursuant to the regulations in these Articles of Association, the Class S shares entitle the holder to participate in the earnings and assets (including any liquidation surplus) of the S division only; the Class A shares entitle the holder to a participation in the earnings and assets (including any liquidation surplus) of the other parts of

the Company (A division). All economic assets (assets, and equity and liabilities) and business activities of the Company and of its subsidiaries and associated companies which cannot be allocated to the S division in accordance with Article 31 must be allocated to the A division.

(4) The Executive Board is authorised until 20 June 2022, with the consent of the Supervisory Board, to increase the company’s share capital by up to € 35,024,417.00 by issuing up to 35,024,417 new registered Class A shares (no-par-value shares with a pro rata share of the share capital of € 1.00 each) against contributions in cash and/or in kind (Authorised Capital I). The authorisation may be utilised once or several times for full or partial amounts. Class S shareholders’ subscription rights are excluded. Class A shareholders are in principle entitled to a subscription right to the new Class A shares. The subscription rights of Class A shareholders are also observed if the new Class A shares are acquired by credit institutions or companies within the meaning of Section 186 (5) sentence 1 AktG with the obligation to offer them for subscription to Class A shareholders (indirect subscription right). Moreover, the Executive Board is authorised, with the consent of the Supervisory Board, to exclude the subscription right of Class A shareholders in the following cases:

(i) for fractional amounts that arise in the course of capital increases against cash contributions or contributions in kind as a result of the subscription ratio;

(ii) in case of capital increases against contributions in kind, especially in relation to company mergers or for the (possibly indirect) acquisition of companies, operations, parts of companies, equity interests or other assets or entitlements to the acquisition of assets, including rights and receivables;

(iii) in case of capital increases against cash contributions, provided that the new Class A shares are issued at a price that does not significantly undercut the stock market price of the previously listed Class A shares at the time of the issue and provided that the overall proportionate amount attributable to the new Class A shares does not exceed 10% of the share capital attributable to the Class A shares at the time the resolution is adopted or, if lower, at the time of the issue of the new Class A shares. This limit includes Class A shares issued or sold while excluding subscription rights during the term of this authorisation until the date of its utilisation in direct or indirect application of Section 186 (3) sentence 4 AktG. It also includes Class A shares issued or to be issued on the basis of debenture bonds with warrant or conversion rights or obligations, where such debenture bonds are issued during the term of this authorisation in accordance with Section 186 (3) sentence 4 AktG with Class A shareholders’ subscription rights being excluded. Shares counted towards the limit in accordance with the above sentences due to the exercise of authorisations (i) to issue new Class A shares in accordance with Section 203 (1) sentence 1, Section 203 (2) sentence 1, Section 186 (3) sentence 4 AktG and/or (ii) to sell Class A treasury shares in accordance with Section 71 (1) no. 8, Section 186 (3) sentence 4 AktG and/or (iii) to issue debenture bonds with warrant and/or conversion rights or warrant or conversion obligations in accordance with Section 221 (4) sentence 2, Section 186 (3) sentence 4 AktG, are no longer included for the future if and to the extent the respective

authorisation(s), the exercise of which led to shares being counted towards this limit, is/are renewed by the Annual General Meeting in accordance with statutory provisions;

(iv) if the Class A shares are offered for purchase or transferred to employees of the company or to employees or members of the governing bodies of its associated companies within the meaning of Sections 15 et seqq. AktG;

(v) to the extent required to grant the bearers or creditors of then outstanding warrant rights and/or debenture bonds those subscription rights to new Class A shares to which they would be entitled after exercising the warrant or conversion right or fulfilling their warrant or conversion obligation.

Under this authorisation, Class A shares may only be issued while excluding the subscription rights of Class A shareholders if the total of the new Class A shares to be issued under this authorisation, combined with (i) any treasury Class A shares disposed of while excluding subscription rights prior to the issue of new Class A shares without subscription rights under this authorisation and (ii) any Class A shares issued or to be issued on the basis of debenture bonds with warrant or conversion rights or obligations that were issued without subscription rights of Class A shareholders prior to the issue of new Class A shares without subscription rights under this authorisation, does not exceed 20% of the share capital attributable to the Class A shares, neither at the time this resolution takes effect nor – if the value is lower – at the time this authorisation is exercised.

The Executive Board is authorised, with the consent of the Supervisory Board, to specify the further details of the implementation of capital increases from Authorised Capital I, in particular the rights pertaining to the shares and the conditions of the share issue. The Executive Board may also, subject to the approval of the Supervisory Board, determine that the new shares are entitled to share in the profits from the beginning of the financial year for which no resolution by the Annual General Meeting has yet been taken on the appropriation of distributable profit at the time of issue of the new shares. The Supervisory Board is authorised to revise the articles of association accordingly depending on the utilisation of Authorised Capital I or following the expiry of the authorisation.

(5) The Executive Board is authorised until 20 June 2022, with the consent of the Supervisory Board, to increase the company's share capital by up to € 1,352,250.00 by issuing up to 1,352,250 new registered Class S shares (no-par-value shares with a pro rata share of the share capital of € 1.00 each) against contributions in cash and/or in kind (Authorised Capital II). The authorisation may be utilised once or several times for full or partial amounts. Class A shareholders' subscription rights are excluded. The Executive Board is authorised, with the consent of the Supervisory Board, to also exclude the subscription rights of Class S shareholders for fractional amounts that arise as a result of the subscription ratio.

The Executive Board is authorised, with the consent of the Supervisory Board, to specify the further details of the implementation of capital increases from Authorised Capital II, in particular the rights pertaining to the shares and the conditions of the share issue. The Executive Board may also, subject to the approval of the Supervisory Board, determine that the new shares are entitled to share

in the profits from the beginning of the financial year for which no resolution by the Annual General Meeting has yet been taken on the appropriation of distributable profit at the time of issue of the new shares. The Supervisory Board is authorised to revise the articles of association accordingly depending on the utilisation of Authorised Capital II or following the expiry of the authorisation.

(6) The company's share capital is increased contingently by up to € 10,000,000.00 by the issue of up to 10,000,000 new registered Class A shares (no-par-value shares with a pro rata share of share capital of € 1.00 each) (Contingent Capital 2016). The contingent capital increase serves to grant Class A shares to the holders or creditors of bonds with warrants and/or convertible bonds or combinations of these instruments issued under the authorisation resolved by the Annual General Meeting on 16 June 2016 under agenda item 8a b) in the period until 16 June 2019 by the company or by companies in which the company holds a direct or indirect majority interest, and that provide for a warrant or conversion right for new registered Class A shares in the company or a warrant or conversion obligation, or that provide for a tender right of the issuer. The contingent capital increase is only to be implemented to the extent that

a) the holders and/or creditors of bonds with warrants and/or convertible bonds exercise the warrant or conversion rights granted to them under bonds with warrants and/or convertible bonds issued by the company or by companies in which the company holds a majority stake in the period until 16 June 2019, or

b) the holders or creditors obliged to exercise options or convert bonds with warrants and/or convertible bonds issued by the company or by companies in which the company holds a majority interest in the period until 16 June 2019 meet their warrant or conversion obligations or to the extent Class A shares are tendered,

and in each case only to the extent that no other methods of fulfilment, including delivery of Class A treasury shares or Class A shares created in any other way, are used.

The new Class A shares are entitled to profits from the beginning of the financial year on in which they arise by the exercise of warrant or conversion rights or by the fulfilment of the corresponding obligations or by exercise of tender rights. Notwithstanding the foregoing, the Executive Board may, with the approval of the Supervisory Board, determine that the new Class A shares are entitled to profits from the beginning of the financial year on for which the Annual General Meeting has not yet adopted a resolution on the appropriation of distributable profit at the time that the warrant or conversion rights are exercised, the corresponding obligations have been met or on the date of tender. The Executive Board is authorised, with the approval of the Supervisory Board, to determine the further details for implementing the contingent capital increase.

#### **Art. 4 – Dividend Rights for Holders of A and S-shares**

(1) Dividend rights for holders of Class S shares are determined by the amount of distributable profit for the year attributable to the S division; dividend rights for holders of Class A shares are determined by the amount of the remaining distributable profit. Distributable profit for the year is allocated to the two divisions in accordance with the principles laid down in Article 4:

a) Distributable profit for the A division and S division is calculated by means of separate, individual annual financial statements, which are prepared voluntarily for each of the two divisions (the "individual divisional financial statements") in accordance with the accounting rules of commercial law at the same time as the annual financial statements for the Company. Their purpose is to calculate the dividend rights of the holders of Class A and Class S shares.

b) The individual divisional financial statements, which must contain both a balance sheet and an income statement, must be shown as an appendix to the Company's annual financial statements. As such, they are subject to the audit performed on the Company's annual financial statements.

(2) If a division achieves a net loss in a financial year, and if this loss is not offset by (i) retained earnings from the previous year (Section 158 (1) sentence 1 (1) of the AktG), a withdrawal from the revenue reserves (Section 158 (1) sentence 1 (3) of the AktG) or the capital reserve (Section 158 (1) sentence 1 (2) of the AktG) of this division or by (ii) loss adjustment by shareholders in this division (either on the basis of an existing contractual duty to offset loss or on a voluntary basis), and if as a result of this the distributable net profit of the other division is reduced or completely eroded, any net income achieved by this division in subsequent financial years, for the purpose of calculating the dividend qualification of the two classes of shares, shall be allocated to the other division until such time as the reduction in distributable profit suffered by that division, including the interest to be calculated in accordance with sentence 2, has been offset. In accordance with the duty to offset specified in the above sentence 1, interest must be paid on the amount by which the distributable profit of the other division was reduced, beginning on the day of the General Meeting which decides on the use of the distributable profit for the financial year in which the division generated the net loss, and ending on the day of the General Meeting which decides on the use of the distributable profit for the financial year for which the reduction was offset, retrospectively on an annual basis at a rate of three percentage points above the basic interest rate specified in Section 247 of the German Civil Code (BGB). Should some or all assets of a division be sold (partial liquidation), the proceeds from this partial liquidation must first of all be used to fulfil any compensation duties to the other division in accordance with this Paragraph 2.

(3) Apportionment, transfer prices and the exchange of liquid funds

a) Expenses incurred and income earned by the Company which cannot be allocated directly to one division alone (e.g. the HR expenses, including expenditure for the Executive Board, Supervisory Board, Group accounting, legal department and controlling), must, solely for the purpose of calculating the dividend rights of the holders of Class A and Class S shares, be divided up in accordance with the division's share in the Group's revenue.

b) All transfer prices for transactions and the exchange of services between the two divisions in the Company must be specified in accordance with the same conditions that apply for third parties and be adjusted regularly in accordance with actual developments.

c) Interest-bearing liabilities and liquid funds, interest expenses and interest income are allocated to each division separately. If an

exchange of liquid funds takes place between the two divisions in the Company, interest must be paid on it in line with market value.

(4) Distribution of the taxes actually paid

a) In order to apportion the taxes actually paid by the Company, each division must create a notional tax balance sheet and calculate the notional tax result attributable to each division.

b) A notional tax burden is the burden of income taxes which would arise if each of the two divisions was legally independent and hence an autonomous tax subject. The notional tax calculation for the division in question must be as close as possible to the actual tax calculation for the tax declarations to be submitted. If, following the calculation of the notional taxes, items are assessed differently in the actual tax calculation or if other deviations occur in the treatment of individual items, the notional taxes must be adjusted accordingly and reflected in profit and loss for the financial year in which the relevant tax declaration with the deviating actual tax calculation is submitted to the fiscal authorities. Allowing for the tax ascertained using the notional calculation, the tax which actually accrues must be allocated to the divisions in accordance with the actual level of tax attributable to each division.

c) If the tax result of a division is negative, the negative amount must be treated as a notional loss carryforward for this division until such time as it is used for the purpose of calculating the notional taxes with future positive results from the same division, if and to the extent to which a loss deduction of this type were legally permissible. If a loss carryback which is permissible under tax law occurs, the resulting tax effect must be recorded for the financial year in which the loss carryback is recognized by the fiscal authorities.

d) If and to the extent to which the actual taxable profit which is accrued by a division of the Company or of one of its subsidiaries is reduced due to losses incurred by the other division, the resulting actual tax reduction for the division's notional statement of accounts must be recorded as a receivable from the division which caused the loss against the other division, which must then record a corresponding liability. This receivable must be recorded in the notional Group divisions in the financial year in which the Group divisional balance sheet for the financial year when the loss incurred is adopted. If the tax rates change in subsequent years, this shall have no effect on the amount of the receivable once it has been recorded. This also covers those cases in which expenses which must be treated as non-tax-deductible for the notional divisional statement of accounts prove to be deductible from the actual tax to be calculated (e.g. because the requirements for deductibility are met only if the two divisions are aggregated), thereby reducing the tax burden on profits attributable to the other division.

e) If the loss incurred by a division is used by the division as part of the loss carryforward in accordance with item (c) above in order to reduce a division's own profit when the notional tax statement is being prepared, a claim which may have arisen against the other division due to the loss carryforward must be written off against the other division effective from the end of the financial year in which the Group divisional balance sheets are approved. If the other division has already settled the claim by way of payment or offsetting, the notional loss carryforward to be stated in accord-

ance with (c) must be reduced by an appropriate amount at the time of settlement.

(5) In the first three months of a financial year, the Executive Board must prepare a report detailing the business transactions, the exchange of services and other activities between the A division and the S division in accordance with Section 312 of German Stock Corporation Act (AktG). This report must list all transactions, exchanged services and other measures (including the steps listed in Paragraph 3 above) effected between the two divisions in the previous financial year. Unless contrary action is required by the Articles of Association and by the fact that the report deals with relations not between the Company and affiliates but between the two Company divisions, this report must be presented to the Company's auditor and to the Supervisory Board for inspection in accordance with Sections 313 and 314 of the AktG, and be audited and certified by the auditor.

(6) Changes to the fiscal assessment basis, especially changes due to investigation by the tax authorities, must always be allocated to the division in which the change in question took place. If this is not possible, the changes must be allocated in accordance with the apportionment statement as stipulated in Paragraph 3 above. If the fiscal authorities, in particular during a tax audit, formally change tax assessment bases in a legally binding manner for a preceding financial year, and if this change leads to an increase or decrease in the taxes notionally allocated to one of the two divisions in accordance with Paragraph 4 (b) using the amended assessment basis, the result which is attributable to the division in question shall increase or decrease in the financial year when the fiscal authorities' changes become final and conclusive by the difference from the taxes notionally allocated to the relevant division for the financial years for which the final and conclusive change to the assessment basis was made.

(7) The regulations in Paragraphs 1 to 6 above shall, where relevant, also apply to the allocation of a liquidation surplus (if one is generated) to both divisions.

#### **Art. 5 — Registered Shares, Securitization, Share Certificates**

(1) The shares in the Company are registered in the name of the shareholders.

(2) The shareholders shall have no claim to securitization of their shares unless securitization is required under the rules valid on the stock exchange where the shares have been admitted. The Company is entitled to issue certificates for individual shares (individual certificates) or groups of shares (collective certificates). The shareholders shall have no claim to the issue of dividend or renewal coupons.

(3) The form and content of share certificates, dividend and renewal coupons, debenture bonds, and interest and renewal coupons shall be determined by the Executive Board with the approval of the Supervisory Board.

#### **Art. 6 — Redemption of Shares**

The Company can compulsorily redeem Class A shares and Class S shares in accordance with Section 237 (1) of the AktG in return for payment of an appropriate redemption fee (authorized

redemption), if and insofar as the shareholders whose shares are to be redeemed give their consent.

### **III. Constitution of the Company**

#### **Art. 7 — Company Bodies**

The following are the bodies of the Company

1. the Executive Board
2. the Supervisory Board
3. the Annual General Meeting.

#### **THE EXECUTIVE BOARD**

#### **Art. 8 — Composition**

The Executive Board shall consist of two or more persons. The appointment of deputy Executive Board members shall be permissible.

#### **Art. 9 — Management and Representation of the Company**

(1) The members of the Executive Board must manage the Company's business in accordance with the law, the Articles of Association and the code of practice specified by the Supervisory Board for the Executive Board, including the schedule of responsibilities.

(2) The Company shall be represented either by two members of the Executive Board acting jointly or by one member of the Executive Board acting jointly with a special authorized agent (Prokurist). Deputy members of the Executive Board shall have the same authority to represent as full members.

(3) If more than one special authorized agent (Prokurist) has been appointed, two shall be authorized to represent the Company jointly.

(4) The Supervisory Board can exempt all or individual members of the Executive Board and authorized agents (Prokurists) entitled to represent the Company jointly with a member of the Executive Board generally or in individual cases from the prohibition of multiple representation pursuant to Section 181, 2nd alternative, BGB. Section 112 of the AktG shall remain unaffected.

#### **THE SUPERVISORY BOARD**

#### **Art. 10 — Composition and Term of Office; Substitute Members**

(1) The Supervisory Board shall consist of six members appointed by the shareholders and six members appointed by the employees. The Supervisory Board members selected by the employees shall be selected in accordance with the German Co-Determination Act (MitbestG).

(2) No member of the Supervisory Board may be appointed for longer than the period permissible under Section 102 of the AktG. Re-election of members shall be permissible.

(3) At the time when the members of the Supervisory Board are appointed, a substitute member can also be appointed for one or

more specific members. If this member resigns from his/her office, his/her substitute shall replace him/her and complete the rest of his/her term in office. The substitute members shall become members of the Supervisory Board in a specified order, determined during the election, if and when the Supervisory Board members elected by the shareholders (as whose substitutes they were elected) resign from the Supervisory Board before expiration of their term of office and a successor has not been appointed. One person may be appointed as a substitute member for more than one Supervisory Board member. The election of substitute members for the Supervisory Board members elected by the employees shall be in accordance with the Co-Determination Act; their term of office shall continue for the rest of the term of the departed member.

(4) If a member of the Supervisory Board departs prematurely, and if a substitute has not been appointed, a new member may be appointed only for the remainder of the term of office of the departed member. If a substitute member replaces the departed member, his office shall end upon completion of the next General Meeting in which an election is held to replace the departed member or when the office of the departed Supervisory Board member expires, whichever is sooner. If a new election is held before the departed Supervisory Board member's term of office expires, the original membership of a person who was appointed as substitute for more than one Supervisory Board member and who ascended to the Supervisory Board for the departed member shall be revived; it shall take precedence if more than one substitute member has been appointed.

(5) At its first meeting after being elected, the Supervisory Board shall select from its own membership a Supervisory Board chairperson and a vice chairperson with a two-thirds majority of the members. The election shall be valid for the whole office of the elected person, or for some shorter time span determined by the Supervisory Board. If the required majority as specified in the previous sentence 1 is not achieved when electing a Supervisory Board chairperson or vice chairperson, a second election shall be held. In this second ballot, the shareholders' Supervisory Board members shall elect the Supervisory Board chairperson, and the employees' Supervisory Board members shall elect the vice chairperson, with a majority of votes cast in both cases. If the chairperson or the vice chairperson departs before his/her term of office expires, the Supervisory Board must immediately organize an election to replace the departed person.

(6) Immediately after the Supervisory Board chairperson and vice chairperson have been elected, the Supervisory Board shall form a committee to discharge the duty described in Section 31 (3) (1) of the German Co-Determination Act. This committee shall consist of the Supervisory Board chairperson, the vice chairperson and two further members, one elected by the employees' Supervisory Board members and one elected by the shareholders' Supervisory Board members by a majority of votes cast.

(7) Every member and every substitute member of the Supervisory Board can resign from office with four weeks' notice, even in the absence of good cause. To do so, the member must make a written declaration which shall become legally valid upon receipt by the Executive Board (which must inform the Supervisory Board

chairperson without delay). This shall be without prejudice to the right to resign from office for good cause without prior notice.

#### **Art. 11 — Duties; Responsibility**

(1) It is the duty of the Supervisory Board to supervise the management. In particular, it can, at any time, demand a report on the Company's affairs from the Executive Board, consult and examine the Company's books and publications and carry out on-site inspections. It can also appoint individual members, or special experts for particular duties, to perform this work.

(2) It is the duty of the Supervisory Board to specify the number, appointment and dismissal of the full and deputy members of the Executive Board and the conclusion and termination of their employment contracts, and to name one member of the Executive Board as chairperson and appoint another member of the Executive Board as vice chairperson.

(3) The Supervisory Board shall decide on a code of practice for the Executive Board. In the code of practice, the Supervisory Board shall specify, among other things, the other transactions which may be performed only with its consent. The Supervisory Board can grant prior revocable approval to a specified group of transactions on a general basis or if the individual transaction meets specific conditions. The Executive Board's schedule of responsibilities shall require the approval of the Supervisory Board and shall form part of the Supervisory Board's code of practice for the Executive Board.

(4) The Supervisory Board shall be authorized to make changes to the Articles of Association which only concern the wording.

(5) In all other regards, the rights and duties of the Supervisory Board shall be determined in accordance with statutory provisions.

#### **Art 12 — Rules of Procedure**

The Supervisory Board shall adopt rules of procedure.

#### **Art. 13 — Meetings; Convening**

(1) The Supervisory Board shall normally hold one meeting every quarter; it must hold two meetings in every half year. It must also hold meetings if this is required by law or appears necessary in the best interests of the Company. In order to hold the Supervisory Board meeting that decides on approval of the annual financial statements, the Supervisory Board's members must be physically present.

(2) The meetings of the Supervisory Board shall be convened in writing by the Supervisory Board's chairperson, subject to an advance notice period of fourteen days. When doing so, he/she shall also specify the form of the meeting. The day on which the invitation is sent and the day on which the meeting is held shall not be included in the 14-day time limit. In urgent cases, the chairperson can reduce the 14-day time limit as appropriate and convene a meeting verbally, by telephone, fax or email or by using any other standard means of telecommunication.

(3) The items on the agenda must also be included in the invitation. If it is in the best interests of the Company, the chairperson can decree that individual items on the agenda are not disclosed in the invitation but at a suitable time before the meeting. If an item on

the agenda has not been duly announced in advance, a resolution concerning it may be passed only if no Supervisory Board member objects. In such a case, absent Supervisory Board members must be given an opportunity to object to the resolution within an appropriate time limit to be specified by the chairperson, or to cast their vote in writing, by fax, email or using any other standard means of telecommunication. The resolution shall come into effect only if the absent Supervisory Board members raise no objection within the time limit or if they have agreed to the resolution.

(4) Persons who do not belong to the Supervisory Board may take part in meetings of the Supervisory Board and its committees in place of Supervisory Board members if authorized in writing to do so by said Supervisory Board members. These persons can also hand over votes made in writing by the Supervisory Board members.

#### **Art. 14 — Adoption of Resolutions**

(1) Resolutions of the Supervisory Board shall normally be adopted in meetings. Supervisory Board members who are participating by means of telephone or video conference shall be deemed to be present. On the instruction of the chairperson of the Supervisory Board, resolutions can also be adopted verbally, by telephone, in writing, by fax, email or using any other standard means of telecommunication (in particular by video conference) outside of meetings if no member objects to this procedure within a reasonable time limit specified by the chairperson. The members shall have no right to object if the resolution is adopted in such a way that participating Supervisory Board members are connected to each other by means of telecommunication so that they can all hear each other (telephone conference) or see and hear each other (video conference) simultaneously and can discuss the resolution.

(2) The Supervisory Board shall be competent to pass a resolution if at least six of its members take part in the adoption process. The committee constituted in accordance with Article 10 Paragraph 6 shall be competent to pass a resolution only if all members of the committee participate in the adoption process. Furthermore, committees shall be competent to pass a resolution only if at least half of their members participate in the adoption of the resolution; in any event, at least three members must participate in the adoption of the resolution. A member shall be deemed to have taken part in adoption of the resolution even if he/she abstains from voting.

(3) The resolutions passed by the Supervisory Board shall require a majority of the votes cast unless otherwise agreed in Article 14 Paragraph 5 of these Articles of Association or Sections 27, 31 and 32 of the German Co-Determination Act. This shall also apply for elections. Abstention from voting shall not be regarded as voting.

(4) Absent Supervisory Board members can participate in adopting resolutions of the Supervisory Board by having other Supervisory Board members or their deputies submit votes in writing in accordance with Article 13 Paragraph 4. In addition, absent Supervisory Board members can cast their vote during the meeting or at a later date verbally, by telephone, fax, email or by using other standard means of telecommunication, especially by video conference, within an appropriate time limit specified by the chairperson of the meeting unless a Supervisory Board member present at the meeting objects. However, no objection can be made if the absent

Supervisory Board member and the Supervisory Board members who are present are linked to each other in a telephone or video conference and can discuss the subject matter of the resolution.

(5) If a vote in the Supervisory Board ends in a tie, the Supervisory Board's chairperson shall have two votes the next time a vote is held on the same matter if the renewed vote also ends in a tie. Section 108 (3) of the AktG shall also be applied to the casting of the second vote. The vice chairperson shall not be entitled to a second vote.

(6) The chairperson of the Supervisory Board shall be authorized, on behalf of the Supervisory Board, to submit the declarations of intent which are required to adopt the resolutions of the Supervisory Board and to receive declarations of intent for the Supervisory Board.

(7) Records of the meetings and resolutions of the Supervisory Board must be kept. These records must be signed by the chairperson of the meeting, or, in the case of votes held outside of meetings, by the chairperson of the vote. Copies must be sent to all Supervisory Board members without delay.

#### **Art. 15 — Committees**

(1) The Supervisory Board can form committees comprising at least three of its own members. This shall be without prejudice to Section 27 (3) of the German Co-Determination Act. The duties, authorizations and procedures of the committees shall be determined by the Supervisory Board. Decision-making powers held by the Supervisory Board may be transferred to the committees insofar as this is legally permissible. Reports about the committees' work must be submitted to the Supervisory Board on a regular basis.

(2) Supervisory Board committees shall be subject to Articles 12, 13 (2 and 3), 14, (1, 2 sent. 4) and Articles 3, 4, 5, 6 and 7, insofar as this does not conflict with any mandatory statutory provisions.

#### **Art. 16 — Remuneration**

The members of the Supervisory Board shall receive remuneration in return for their work. This remuneration shall be specified by resolution at the Annual General Meeting.

#### **THE ANNUAL GENERAL MEETING**

##### **Art. 17 — Duties; Responsibility**

The rights and duties of the Annual General Meeting are determined in accordance with these Articles of Association and statutory provisions.

##### **Art. 18 — Location, Time and Convening of the Annual General Meeting**

(1) The Annual General Meeting shall take place at the Company's registered office, in another major German city or the seat of a German stock exchange to which the Company's shares have been admitted for trading.

(2) The Annual General Meeting shall be convened by the Executive Board, or by the Supervisory Board in the cases provided for by law, or by those shareholders who hold the necessary authority.

This shall be without prejudice to the statutory right of other bodies and persons to convene the General Meeting.

(3) The Annual General Meeting which decides on appropriation of the distributable profit for the year, the discharge of the members of the Executive Board and the Supervisory Board, the appointment of the auditor and, in the cases provided for by law, adoption of the annual financial statements or the approval of the consolidated annual financial statements (Annual General Meeting) must take place within the first eight months of the Company's financial year. Extraordinary General Meetings may be convened as often as appears necessary to serve the best interests of the Company.

(4) The Annual General Meeting shall be convened at least thirty days prior to the date of the Annual General Meeting unless a shorter notice period is permitted by statute (notice period for convention). The notice period for convention is extended by the number of days allowed for registration as defined in Article 19 (1).

#### **Art. 19 — Requirements for Participation and Exercise of Voting Rights**

(1) Those shareholders who have registered with the Company in good time prior to the Annual General Meeting and whose registered shares have been entered in the share register on the day of the General Meeting shall be entitled to participate in the Annual General Meeting and exercise their voting rights. The registration must reach the Company at the address provided in the invitation in written form (Section 126 of the German Civil Code) or in text form (Section 126b of the German Civil Code) in German or English at least six days before the Annual General Meeting (deadline for registration) at the address provided in the invitation. Registration can also be sent by fax or email if so determined in the invitation. The Executive Board is authorized to set a shorter deadline for registration of up to three days before the Annual General Meeting in the convening documents. This applies correspondingly to the Supervisory Board if it convenes the Annual General Meeting. No information shall be deleted from, or new entries made in, the share register on the day of the Annual General Meeting or in the last six days prior to the Annual General Meeting.

(2) The details about registration and the issuance of tickets must be provided in the invitation to the General Meeting.

#### **Art. 20 — Voting Rights**

(1) Each share entitles its holder to one vote at the Annual General Meeting. If the statutory provisions require a special resolution to be adopted by holders of a given class of shares, only the holders of that class of shares shall be entitled to vote.

(2) Voting rights can be exercised by authorized representatives. The granting, revocation and demonstration to the Company of this authorization must be carried out in written form. Proof of authorization can also be transmitted by email or other electronic means to be specified in more detail by the Company. The details shall be announced along with the convening of the Annual General Meeting. The above provision shall not apply for the authorization of financial institutions, shareholders' associations and other persons accorded the same status under the AktG; in this respect, Section 135 of the AktG shall apply.

(3) The Executive Board is authorized to provide for shareholders to cast their vote in writing or by means of electronic communication without attending the Annual General Meeting (postal vote) and determines the details as necessary. An announcement to this effect is to be made when the meeting is convened.

#### **Art. 21 — Chairing the Annual General Meeting; Participation of Members of the Executive Board and Supervisory Board**

(1) The Annual General Meeting shall be chaired by the chairperson of the Supervisory Board or, in case of his/her being prevented from attending, by a shareholders' member of the Supervisory Board to be elected by a simple majority of the Supervisory Board's members.

(2) The chairperson shall lead the negotiations and specify the order in which the items on the agenda are dealt with, as well as the form of voting.

(3) The chairperson can specify the order of speeches and can restrict the shareholders' questioning and answering rights to an appropriate time level. In particular, he/she shall be authorized to stipulate, at the start of or during the Annual General Meeting, an appropriate time framework for the Annual General Meeting as a whole and the discussion of individual agenda items, or the individual questions or statements.

(4) The members of the Executive Board and Supervisory Board should attend the Annual General Meeting in person. Members of the Supervisory Board who are prevented from personally taking part for good cause can also participate by means of video and sound transmission.

(5) The Executive Board is authorized to arrange for audio or video transmission of the Annual General Meeting in whole or in part. An announcement to this effect is to be made when the meeting is convened.

#### **Art. 22 — Adoption of Resolutions**

(1) The resolutions at the Annual General Meeting shall be adopted with a simple majority of votes cast and, if a majority of the capital is required in addition to the majority of votes, with a simple majority of the nominal capital represented when the resolution is adopted, unless otherwise stipulated by law or the Articles of Association. The preceding Sentence 1 shall apply analogously for special resolutions.

(2) The chairperson of the meeting shall determine the form and other details of the voting.

#### **Art. 23 — Minutes of the General Meeting**

Notarized minutes of the negotiation in the Annual General Meeting must be taken and signed by the notary.



## IV. Financial Year and Annual Financial Statements

### Art. 24 — Financial Year

The financial year of the Company shall be the calendar year.

### Art. 25 — Annual Financial Statements; Management Report; Group Financial Statements and Group Management Report

(1) In the first three months of the financial year, the Executive Board must prepare the annual financial statements (balance sheet and income statement together with notes to the financial statements including the individual divisional financial statements) and management report for the preceding financial year, as well as the consolidated financial statements and the Group management report, and submit them without delay to the Supervisory Board and to the auditor appointed by the Annual General Meeting. At the same time the Executive Board shall provide the Supervisory Board with a proposal for the appropriation of the distributable profit for the year. The regulations of the Third Book of the German Commercial Code for large corporations must be used for the preparation of the financial statements and management reports.

(2) The Supervisory Board must check the annual financial statements, management report, consolidated financial statements and Group management report as well as the proposal for appropriation of the distributable profit for the year, and submit a written report on the results to the General Meeting. It must forward its report to the Executive Board within one month of receiving the documentation. The Supervisory Board must explain at the end of the report whether it endorses the annual financial statements and consolidated financial statements prepared by the Executive Board. If the Supervisory Board endorses the annual financial statements after auditing them, they are adopted unless the Executive Board and Supervisory Board resolve to leave the adoption of the annual financial statements to the Annual General Meeting.

(3) The Executive Board must convene the Annual General Meeting immediately after receiving the report from the Supervisory Board. The annual financial statements, individual financial statements endorsed by the Supervisory Board in accordance with Section 325 (2a) of the German Commercial Code, the management report, the consolidated financial statements, the Group management report, the report of the Supervisory Board, the explanatory report of the Executive Board on the statement in accordance with Section 289 (4) and Section 315 (4) of the German Commercial Code and the proposal of the Executive Board on the appropriation of the distributable profit for the year must all be displayed for inspection by the shareholders on the Company's premises as from the time the meeting is convened, and copies must be sent without delay at the request of any shareholder unless they are available for the same period on the Company's website.

### Art. 26 — Revenue Reserves

(1) If the Executive Board and the Supervisory Board approve the annual financial statements, they can allocate amounts up to half the net profit for the year into other revenue reserves. Amounts which must be allocated to the statutory reserve and a loss carry-forward must be deducted in advance from the net profit for the year.

(2) Allocations to revenue reserves (Section 158 (1) sentence 1 (4) of the AktG), like the formation of profit and loss carryforwards, must, if legally permissible, (i) be undertaken separately for each division taking into account the existing reserves and profit and loss carryforwards in each case, as well as the net profit or losses for the year generated by each of the divisions in question and (ii) always be posted separately for each division of the Group. Sentence 1 shall apply accordingly to the withdrawals on the balance sheet items mentioned there; if legally permissible, these withdrawals are allowed only for the benefit of the division for which these balance sheet items were formed and recorded, and are also to be used for this division only.

(3) If a division generates a net loss in a financial year, as a result of which the other division's distributable profit for the year could be reduced or completely eroded, this net loss for the year must be offset, within the boundaries of what is legally permissible, by liquidating the available revenue reserves of the division which generated the net loss for that year.

### Art. 27 — Capital Reserves

(1) Notwithstanding other financing options available to the shareholders, holders of Class S shares shall be entitled to make payments into the free capital reserve in accordance with Section 272 (2) (4) of the German Commercial Code at any time.

(2) These payments to the free capital reserve, like allocations to the tied capital reserve as defined by Section 272 (2) (1 to 3) of the German Commercial Code must, if legally permissible, (i) be undertaken separately for each division of the Company and (ii) always be recorded separately for each division of the Company. Sentence 1 shall apply accordingly to the liquidation and withdrawals from the capital reserve; if legally permissible, such withdrawals are allowed only for the benefit of the division for which these balance sheet items were formed and recorded, and must also be used for this division only.

(3) If a division generates a net loss in a financial year, as a result of which the other division's distributable profit for the year could be reduced or completely eroded, this net loss for the year must be offset, within the boundaries of what is legally permissible, by liquidating the available free capital reserve of the division which generated the net loss for that year.

### Art. 28 — Appropriation of Profits

The holders of Class A shares and Class S shares shall together pass a resolution at the General Meeting regarding the appropriation of the Company's distributable profit for the year determined from the adopted annual financial statements. Both in the proposed appropriation of profits (Section 170 (2) sentence 2 of the AktG) and in the resolution on the appropriation of profits to be adopted by the General Meeting (Section 174 (2) of the AktG), the respective proportions of (i) the distributable profit for the year, (ii) the amount of tangible assets to be distributed among the shareholders, (iii) the amounts to be transferred to the revenue reserves, (iv) the retained earnings and, if applicable, (v) the additional expenses caused by the resolution, allocated to the Class S shares and Class A shares should be shown separately.

## V. Connections to the Free and Hanseatic City of Hamburg

### Arti.29 – Special Rights of the Free and Hanseatic City of Hamburg

(1) The Free and Hanseatic City of Hamburg shall claim the rights arising from Section 53 of the German Budgetary Procedures Act (HGrG). The Audit Office of the Free and Hanseatic City shall be entitled to use the rights arising from Section 54 of the HGrG.

(2) The Company may acquire an interest of more than 25% of the nominal or share capital in another company only if the rights specified in Paragraph 1 are stipulated in the articles of association or company agreement of this company, and it is specified that the annual financial statements and management report must be prepared and audited in accordance with the regulations for large corporations contained in the Third Book of the German Commercial Code. In the event of a majority interest, a resolution in accordance with Sentence 1 of this paragraph should also be adopted.

## VI. Announcements

### Art.30 – Announcements

(1) Announcements by the Company shall be made by way of publication in the German Federal Gazette. If some other form of announcement is required by law, this shall take the place of any publication in the German Federal Gazette.

(2) The Company shall be entitled to convey information to the registered shareholders by means of data transmission if the latter are in agreement with this.

## VII. S-Division

### Art.31 – Allocation to the S Division

(1) The S division encompasses all the business assets of the Group which are required or specified for the acquisition, maintenance, sale, leasing, management and development of properties not specific to port transshipment (buildings and other constructions and facilities firmly connected to the ground, which, once they have been used for their intended purpose, are not intended wholly or largely to serve purposes of seaport traffic, especially not in the container, intermodal and logistics business fields) as well as all business activities related to this sector (including ancillary business and auxiliary transactions) and other measures, regardless of whether the Company is active itself in this respect or through its subsidiaries or associated companies.

(2) In accordance with the criteria contained in Paragraph 1, the S division includes (i) all assets, accrued and deferred items, and debts to be assigned to the S division on 1 January 2007, 00.00 hours (the “key date”) in accordance with German commercial law, including all benefits and encumbrances from the key date onwards

and all additions and disposals in the ordinary course of business (the “business assets”) and (ii) all the contractual and other legal relationships of any kind to be allocated to the S division on the key date, together with all rights and duties in each case and regardless of whether or not they are reported in the balance sheet (the “contractual and other legal relationships”), particularly:

a) the property, plant and equipment belonging to the S division, including the individually held property in the following buildings of the historical Speicherstadt warehouse district: Block X (Brooktorkai 3–10), Block V (Brooktorkai 11–16 / Dienerreihe 3), Block O 1–3 (Am Sandtorkai 1–3), Block O 4 and 5 (Am Sandtorkai 4 and 5), Block O 6–8 (parking garage; Am Sandtorkai 6–8), Block N (Am Sandtorkai 23–24), Block M 25–28 (Am Sandtorkai 25–28), Block M 28a (Am Sandtorkai 28a), Kesselhaus (Am Sandtorkai 30), Block L (Am Sandtorkai 31–36a), Block W 4–7 (Alter Wandrahm 4–7 / Poggenmühle 3), Block W 8–11 (Alter Wandrahm 8–11 / Dienerreihe 2), Block P (Neuer Wandrahm 1–4), Kaffeebörse (Block G 3; Pickhuben 3), Block H (Brook 1 and 2 / Pickhuben 2, 4 and 6), Block G 5 (Pickhuben 5), Block G 7, 9 (Pickhuben 7 and 9), Block E (Brook 3–9 / Auf dem Sande 1a), Block Q (St. Annenufer 4–6 / Kannengießerort 7), Block R (St. Annenufer 2–3) and customs buildings (Neuer Wandrahm / Kornhausbrücke) which occupy an area in the Altstadt-Süd district and all leasing agreements for the aforementioned buildings and associated land areas;

b) all the financial assets attributable to the S division including the participations in GHL Gesellschaft für Hafen- und Lagereiimmobilien-Verwaltung Block T GmbH, GHL Gesellschaft für Hafen- und Lagereiimmobilien-Verwaltung Block D GmbH, GHL Gesellschaft für Hafen- und Lagereiimmobilien-Verwaltung Bei St. Annen GmbH and Fischmarkt Hamburg-Altona GmbH (“FMH”), in each case with the right to a share in profits for all financial years starting on or after the key date, including any subsidiaries and associated companies of these companies. The participations in the aforementioned companies and the business activity, assets, and equity and liabilities of these companies must be assigned to the S division even if they do not completely fulfill the criteria stipulated in Paragraph 1 for allocation to the S division; this shall apply in particular to the fishing industry and warehousing activities of FMH and all activities of FMH in connection with the cultivation of the area around Edgar-Engelhard-Kai.

(3) When the individual divisional financial statements for the S division are prepared for the first time, the S division must be allocated a proportion of all the Company’s equity items corresponding to the ratio of Class S shares to Class A shares (cf. Article 3, Paragraph 2). The opening divisional balance sheet of the S division to be prepared as of the key date must carry as an equalization liability against the A division an amount equal to the difference between the equity thus defined and the debts to be allocated to the S division in accordance with Paragraph 2 on the one hand, and the assets to be allocated to the S division in accordance with Paragraph 2 on the other.

(4) All acquisitions, disposals, and other dispositions concerning the business assets of the Company and its subsidiaries and associated companies, the establishment or termination or cancellation of contractual or other legal relationships by the Company and/or its subsidiaries or associated companies and the implementation of other measures after the key date must likewise be allocated to the S division if they (i) relate to the business assets and contractual and other legal relationships to be allocated to the S division, (ii) are implemented by one of the subsidiaries listed in Paragraph 2 (b) or their subsidiaries or associated companies or (iii) must otherwise be allocated to the S division in accordance with the criteria laid down in Paragraph 1.

(5) All income and expenses of the Company and its subsidiaries and associated companies after the key date which relate to business assets and contractual and other legal relationships to be allocated to the S division, in particular all the business activity of the subsidiaries listed in Paragraph 2, Sentence 2 (b) must be allocated to the S division.

### **Art. 32 – Right to Information**

(1) The Executive Board must immediately provide every holder of Class S shares who is legally or contractually obliged to compensate for a net loss for the year which would otherwise be generated by the S division with information on the Company's affairs and those of its direct and indirect subsidiaries and associated companies, also outside of the General Meeting on request, and to issue copies of account books, writings and other documentation, if the request for information or documentation relates to the S division or the relationship of the S division with the A division.

(2) The information must comply with the principles of diligent and accurate accountability.

(3) Section 93 (1) sentence 3 of the AktG shall remain unaffected.

*The Articles of Association of Hamburger Hafen und Logistik Aktiengesellschaft is a translation of the original German „Satzung der Hamburger Hafen und Logistik AG“. Please note that only the German version is legally binding.*