



**Legal grounds for  
organisation and  
management of an  
integrated public  
transport system  
in the LGOM region**

*summary*

## EXECUTIVE SUMMARY

### Legal report concerning legal grounds for organisation and management of an integrated public transport system in the LGOM region

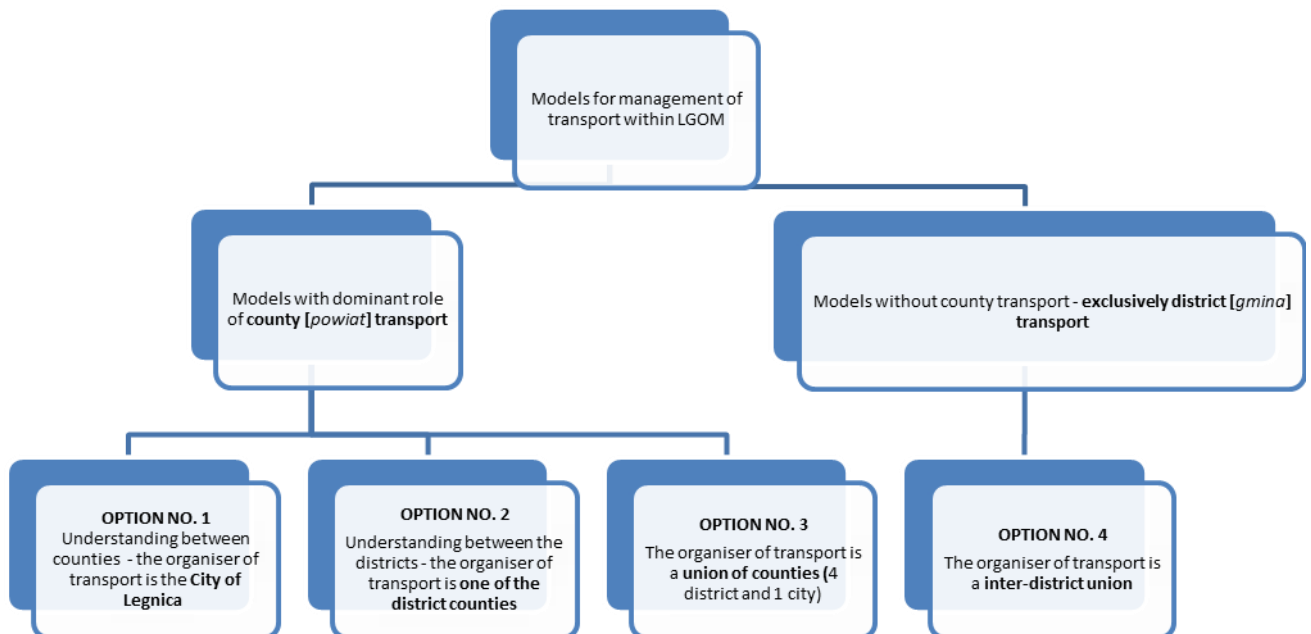
#### 1. Initial Comments

The purpose for carrying out the legal expertise was to verify the legal grounds for the organisation and management of an integrated public transport system within the Lignica Głogów Copper District (LGOM) as well as to identify potential options that could be implemented to manage the integrated public transport system within LGOM. LGOM covers an area of 5 counties [*powiaty*]:

- 1) district counties: Legnica, Głogów, Lubin and Polkowice
- 2) town county of Legnica - city having county rights

together with towns located within them: Lubin, Głogów and Polkowice.

#### 2. Options for management of the integrated public transport system within LGOM considered



### 3. Advantages and disadvantages of the individual options

	Option No. 1	Option No. 2	Option No. 3	Option No. 4
<b>Advantages</b>	<p>a) financial efficiency consisting of the possibility of securing subsidies to statutory discounts on the largest possible number of lines by setting the transport net in such a manner that the maximum amount of lines run through at least 2 districts</p> <p>b) this option also allows for agreements with transport operators to, in the highest degree and in the simplest manner, to be concluded in accordance with Article 22 par. 1 PMTA, i.e. by way of direct entrustment</p>	<p>a) financial efficiency consisting of the possibility of securing subsidies to statutory discounts on the largest possible number of lines by setting the transport net in such a manner that the maximum amount of lines run through at least 2 districts</p> <p>b) this option also allows for agreements with transport operators to, in the highest degree and in the simplest manner, to be concluded in accordance with Article 22 par. 1 PMTA, i.e. by way of direct entrustment</p>	<p>a) financial efficiency consisting of the possibility of securing subsidies to statutory discounts on the largest possible number of lines by setting the transport net in such a manner that the maximum amount of lines run through at least 2 districts</p> <p>b) this option also allows for agreements with transport operators to, in the highest degree and in the simplest manner, to be concluded in accordance with Article 22 par. 1 PMTA, i.e. by way of direct entrustment</p> <p>c) additionally, greater financial transparency compared to understandings between counties may be considered to be an advantage of this option</p>	<p>a) the advantage of this option is the highest degree of integration which assumes cooperation between all of the districts through which regional communications will run</p>
<b>Disadvantages</b>	<p>A small disadvantage of this option may be considered the complicated manner</p>	<p>a) a disadvantage of this option may be deemed the fact that</p>	<p>a) a disadvantage of this option may be deemed the fact that</p>	<p>a) The fundamental disadvantage of this model is the need to</p>

	<p>of financing services and requiring the conclusion of appropriate understandings first at a county level and next between the organiser of transport and districts taking part in costs associated with its financing</p>	<p>district counties at present do not have any experience in managing public transport, a situation that does not take place in the case of option 1</p> <p>b) A small disadvantage of this option may be considered the complicated manner of financing services and requiring the conclusion of appropriate understandings first at a county level and next between the organiser of transport and districts taking part in costs associated with its financing</p>	<p>a union of counties is a significantly more formalised structure that requires the adoption of a union statute, the appointment of a union Management Board and does not, de facto, release the individual counties from their obligation to carry out supervision of the functioning of union authorities and, as a result, over public transport within the LGOM region,</p> <p>b) a small disadvantage of this option may be considered the complicated manner of financing services and requiring the conclusion of appropriate understandings first at a county level and next between the organiser of transport and districts taking part in costs associated with its financing</p>	<p>engage all of the districts within the region in which transport were to be organised in the undertaking since only if this condition is met can requirements associated with district passenger transport and municipal transport be met in respect to the creation of a union by “neighbouring districts”, otherwise we could be dealing with “provincial passenger transport” and districts, in accordance with PMTA, are not allowed to organise such.</p> <p>b) This option deprives carriers the possibility of applying for subsidies to statutory discounts.</p>
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#### 4. Delegation of rights to transport organiser

Pursuant to Article 7 par. 4 of the Public Public Transport Act (PMTA), the tasks of organiser are carried out by, in the case of:

- 1) a district - by the district administrator or mayor;
- 2) a union of districts -the Management of the inter-district union;

- 3) cities having county rights - the mayor of the city having county rights;
- 4) a county - the county executive
- 5) a union of counties -the Management of the union of counties;
- 6) province -marshal

As such, since the legislator has literally stated that the responsibilities of organiser are performed by the authorities listed above, it is not possible to delegate legal risks relating to all tasks and authorisations entrusted with the organiser to a company in which the given organiser independently or together with other local government authorities holds 100% of shares or stocks, i.e. to a so-called internal operator. Of course the above does not exclude the possibility of outsourcing the performance of a part of the organiser's responsibilities to such a company without a tender, however, such may not take on the form of a delegation of tasks but only the performance of certain contracted tasks and not as an organiser, but as an entity performing certain specific services associated with the organisation, planning or management of public public transport. In addition it should be noted that tasks/assignments pursuant to which the transport organiser acts as the administrative authority issuing any type of decisions/certificates or opinions cannot be outsourced.

## **5. Possibility to secure subsidies to statutory discounts**

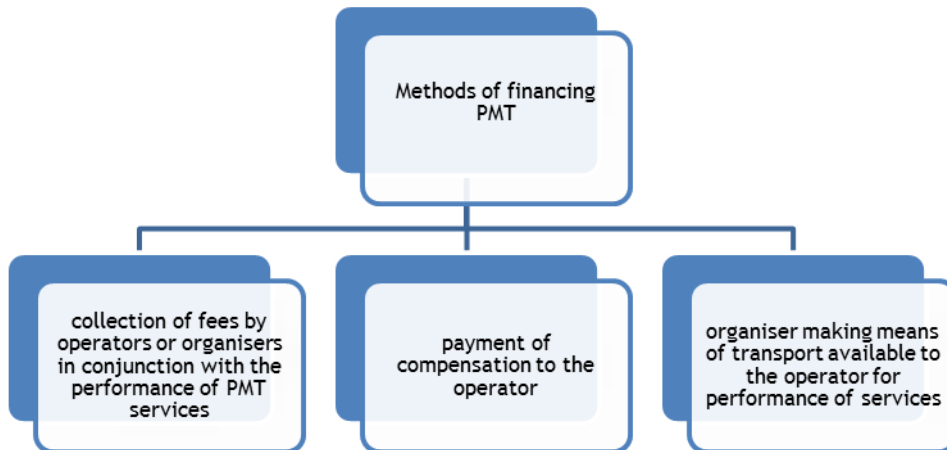
In order for a given service (transport) to obtain co-financing from the central budget, the joint meeting of the following premises is required:

- a) such transport may not be a service performed as part of municipal transport;
- b) the given carrier/operator must demonstrate the meeting of traits described in Article 8a par. 4 of the Act on Rights to Discount Transport.

## **6. Subsidy financing of non-profitable transport and sources of financing.**

### **6.1. Methods of financing**

The following drawing shows three methods for the financing of public public transport



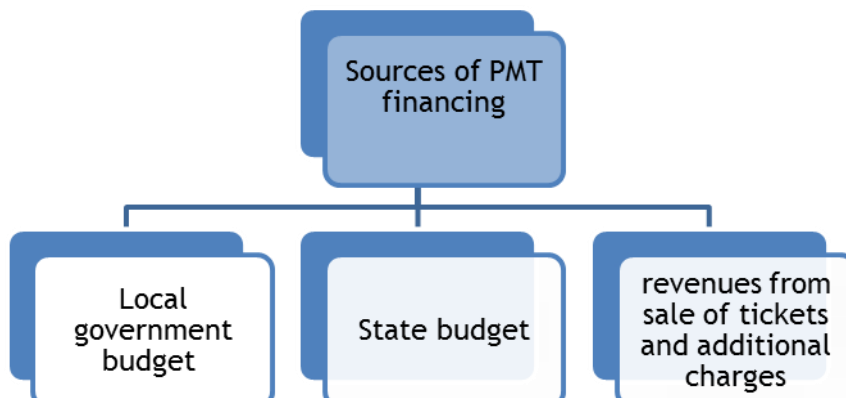
The above methods of financing may not be joined and do not constitute a discrete alternative.

It should also be remembered that the above cases only apply in circumstances when the selection of an operator is carried out by way of direct entrustment (i.e. also in case of so-called insignificant services having a value of up to EUR 1 million or 300,000 vehicle-kilometers). In case of applying Public Procurement Act methods, the grounds for remuneration for the operator selected in the manner may only be:

- a) the operator collecting fees in conjunction with the performance of public public transport services, or
- b) the organiser paying the operator remuneration in accordance conjunction with the tender terms and conditions, or
- c) the organiser compensating the operator for:
  - lost revenues arising from the application of statutory rights to discounted transport in public public transport, or
  - lost revenues arising from the application of statutory rights to discounted transport in public public transport established within the area falling under the given organiser if such have not been established.

## 6.2. Sources of finance

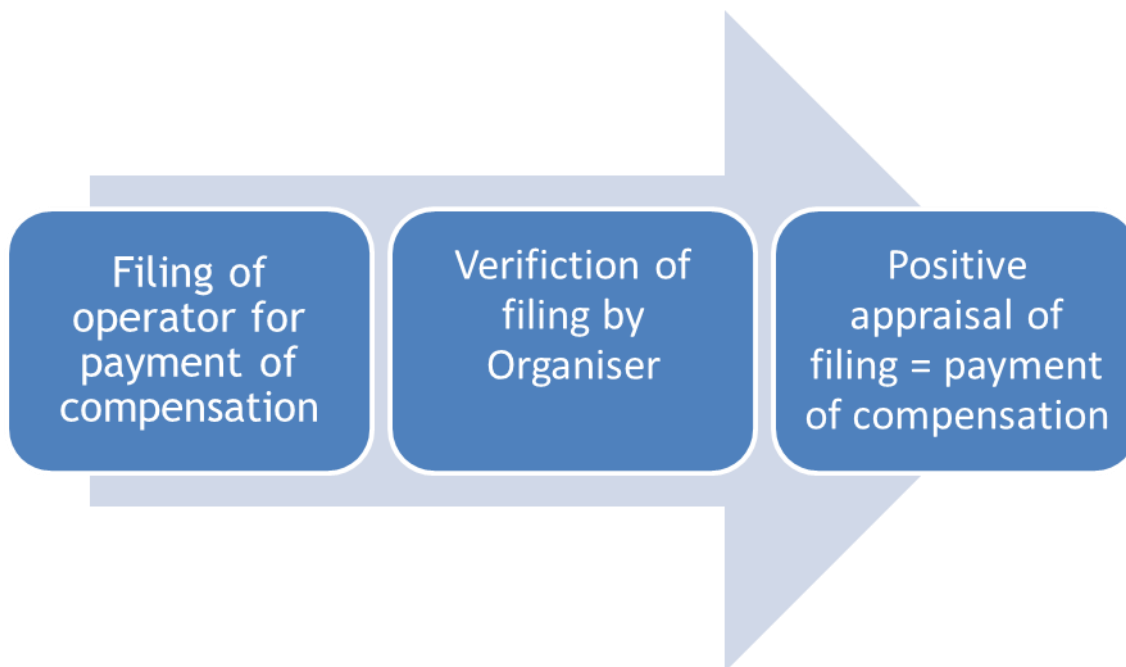
The following drawing shows three main sources for the financing of public public transport.



### 6.3. Compensation

The operators, pursuant to Article 52 par. 1 PMTA is entitled to compensation if he demonstrates that grounds for incurred losses associated with the performance of services relating to public transport are lost revenues and that he has incurred costs referred to in Article 50 par. 1 item 2 proportionally to incurred losses. As such, it should be noted that compensation is the fundamental form of financing non-profitable transport regardless of who the organiser of such transport is. It should be noted though that if the operator is an internal entity as defined in Regulation 1370/2007, then a reasonable level of profit described in the appendix to Regulation 1370/2007 is also due as part of such compensation. Compensation is paid-out upon request following verification of both the financial and tangible correctness as well as in respect to public aid.

A summary of the above conclusions is presented below



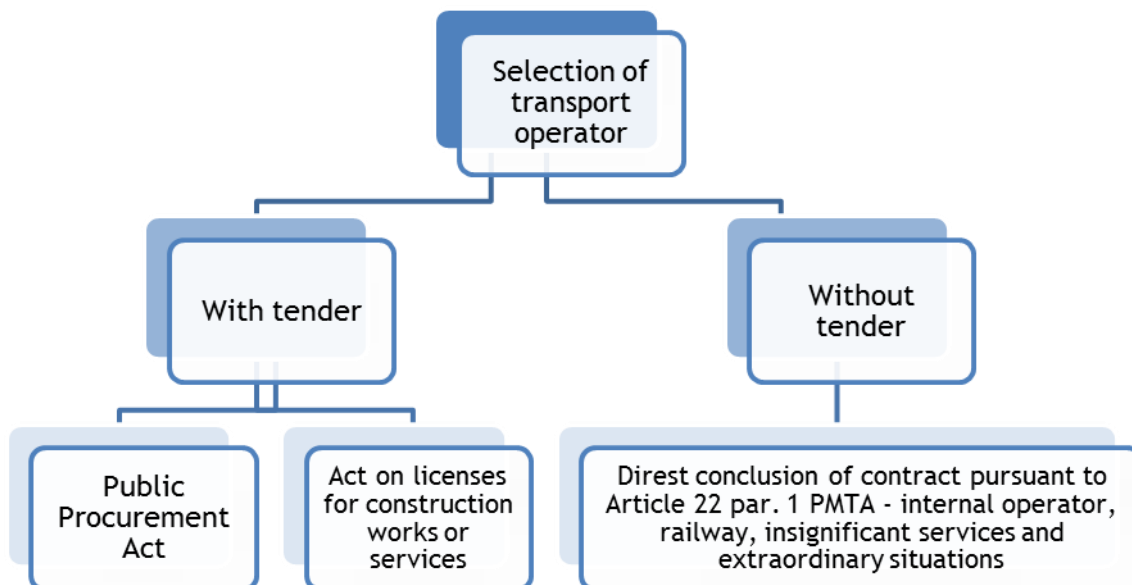
Of course, PMTA does not impose one model for the financing of public public transport in the form of compensation, it is also possible for (and, in the case of a license or municipal transport, obligatory) for a part of business risk to be transferred to the operator if the selection of the operator was carried out in accordance with public procurement proceedings and the only form of subsidy financing of his services will be compensation for statutory or local discounts. Therefore, when deciding on the manner in which to outsource a service as well as principles relating to its financing, a detailed economic analysis of costs and benefits of each solution should be carried out since application of the compensation model in a manner that complies with PMTA and Regulation 1370/2007 may undoubtedly serve to improve the quality of performed services, something that

cannot always be done in the case of traditional tender proceedings carried out under a public tender.

## 7. Principles regarding selection of transport operators

### 7.1. General principles

In principle, pursuant to Article 19 PMTA, selection of the transport operator by the organiser may be carried out in one of three manner, however the first two are associated with the commissioning of appropriate tender proceedings and one constitutes an expression of harmonisation of domestic law with Regulation 1370/2007 and introduces into domestic law, for the first time, the possibility for a transport organiser (district, county, union of districts or counties) to directly conclude contracts with transport operators having a status of internal operator as defined in the provisions of Regulation 1370/2007.



The subject of further analysis will be the method of direct conclusion of a contract pursuant to Article 22 par. 1 PMTA constituting an expression of adaptation of domestic law to EU law.

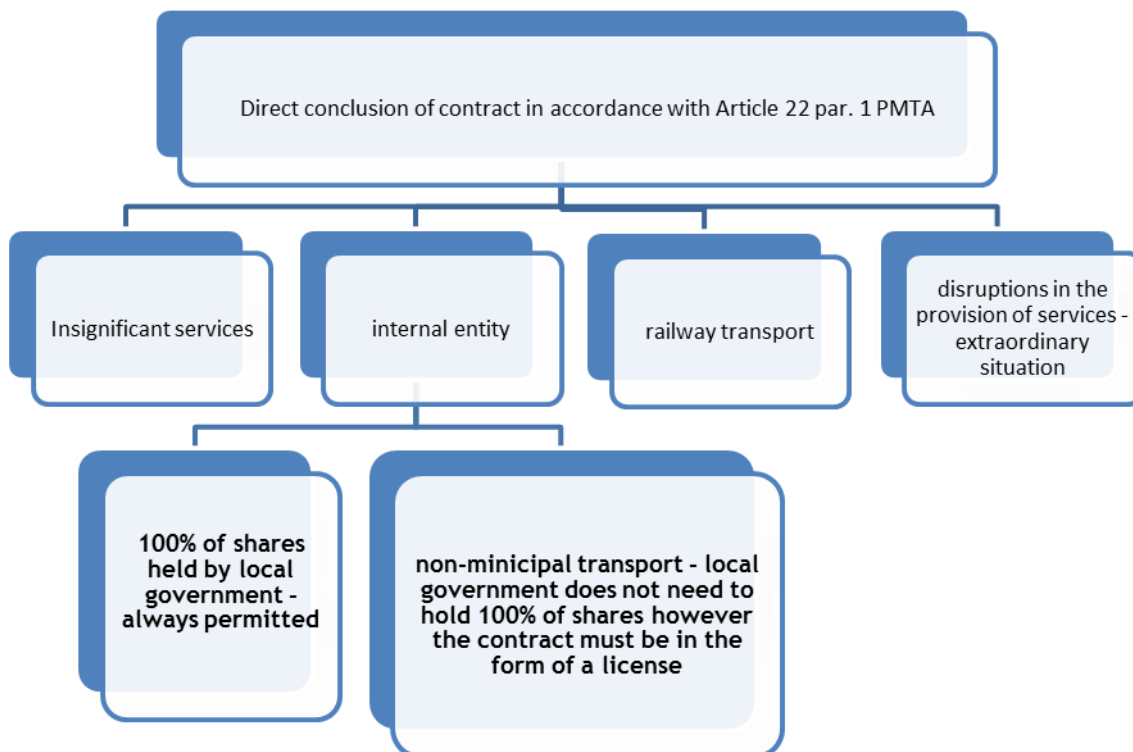
### 7.2. Direct conclusion of contract

The introduction of regulations concerning the direct conclusion of contracts into PMTA is the result of harmonisation and implementation of provisions of Regulation 1370/2007 as well as the Teckal



doctrine described above and relating to entrusting the provision of services of general economic interest without a tender into domestic law.

The following drawing shows four situations in which the direct conclusion of a contract is possible as a discrete alternative.



The Organiser, pursuant to Article 22 par. 1 PMTA may conclude a contract for the provision of services relating to public public transport directly if:

- 1) the annual average value of the subject of the contract is less than EUR 1,000,000 or the provision of services relating to public public transport relates to the provision of such services in an amount equal to less than 300,000 kilometres per year, or
- 2) the provision of services relating to public public transport is to be performance by an internal entity as defined in Regulation 1370/2007 and incorporated for the provision of services relating to public public transport, or
- 3) the provision of services relating to public public transport is to be performed using rail transport, or

4) disruptions in the provision of services relating to public public transport occur or there exists a direct risk that such a situation may occur due to reasons lying with or not lying with the operator if deadlines defined for other methods for the conclusion of contracts for the provision of public public transport referred to in Article 19 par. 1 items 1 and 2 PMTA cannot be met.

## 8. SUMMARY

Bearing in mind the legal analysis carried out above, in our opinion the most efficient options for the management of transport within the LGOM region are options 1 and 4 presented above with their implementation should be depend on, in addition to the performance of an economic-technical analysis, the decision concerning directions for integration and the role of municipal transport in such integration as well as defining what form of passenger transport, district or county, will be complementary to the other. In our opinion the most effective option is Option No. 1 which is characterised by:

- a) financial efficiency consisting of the possibility of securing subsidies to statutory discounts on the largest possible number of lines by setting the transport net in such a manner that the maximum amount of lines run through at least 2 districts,
- b) the largest scope and simplest form of concluding contracts with transport operators in accordance with Article 22 par. 1 PMTA

<i>Wroclaw 10.09.2011</i>	<i>Marcin Maciocha Attorney-at-Law Public Transport Team Refunda sp. z o.o.</i>
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