

(Translation from the Polish language)

## FINANCIAL SUPERVISORY COMMISSION

### Current report No 179/2011

Date: 6 December 2011

Issuer's shortened name: KOPEX SA

Subject: **Significant agreement of the Issuer's subsidiary**

Legal basis: Law on Offer, Art. 56, Par.1 Item 1 – current and cyclic information

#### **Contents of the report:**

The Management Board of KOPEX SA with its registered seat in Katowice (the Issuer) informs that today has been aware of receiving on 5 December 2011 by KOPEX-Przedsiębiorstwo Budowy Szybów SA with its registered seat in Bytom (the Issuer's subsidiary) an agreement signed with OKD a.s. based in Ostrava (The Czech Republic).

The Parties of the agreement dated 5 December 2011 are KOPEX-Przedsiębiorstwo Budowy Szybów SA – Contractor and OKD a.s. – Orderer.

Subject of the agreement is „CSA 2 shaft deepening from the level 11 to the level 12 in Karvina mine, area CSA”.

Net value of the agreement: CZK 885,198,430.00; PLN 157,299,761.01 – according to the rate set by the NBP as at 5.12.2011

Term of the agreement: 48 months from the date of the agreement

#### **Stipulated penalties:**

- I. The Contractor is obliged to pay the Orderer stipulated penalties amounting to:
  - a) 0.1% of the value of the partial works for each day of delay in the execution in relation to the schedule of works, limited to 10% of the value of these works,
  - b) 5% of the agreement value in case of unjustified withdrawal/termination of the agreement by the Contractor (while the Orderer meets all its obligations under the agreement in relation to the Contractor),
  - c) up to the value of CZK 1,000,000.00 in case of termination of licences and/or certificates entitling to execution of the contractual works, awarded by competent Mining Authority in the Czech Republic.

#### **Furthermore:**

The Contractor shall have the right to pledge the receivables arising from the agreement only with the prior written consent of the Orderer. The Contractor is obliged to pay the Orderer stipulated penalties amounting to 10% of the nominal value of the charge (authenticity) in case of breaching that obligation. The Orderer acknowledges the possibility of a lien on the receivables, arising from the implementation of this agreement, in favor of a bank crediting the Contractor. II. The Orderer is obliged to pay the Contractor stipulated penalties:

1. In case of downtime due to default of the Orderer to the Contractor, the Orderer will pay the reasonable costs associated with downtime amounting to 300 CZK for each man-hour. The Orderer will pay the Contractor any other

costs on the basis of the mutually agreed calculation of these costs. Construction completion date will be extended by the duration of downtime.

2. In case of stoppage of works by the Orderer, the Orderer shall pay the Contractor the costs necessarily associated with the stoppage (clearing, removal of equipment from the construction site, reassembly, etc.).
3. In case of delayed payment of the invoice, the Orderer shall pay the Contractor interest on the amount specified in the currently applicable law.
4. In case the Orderer or other Contractor of the Orderer will create obstacles to the progress and execution of the works, the Contractor will call the Orderer for removing irregularities through the entry in the protocol form the control date, possibly through the entry in the mine site diary. The Orderer shall as soon as possible remove this irregularities, otherwise, this fact will be taken into account within the term of works completion and the Contractor will be paid the remaining costs.

Terms of cancellation/termination of the agreement:

1. Flagrant violation of the agreement, which gives the other party the right to withdrawal from the agreement, is:
  - a) unreasonable stoppage of work by the Contractor or unreasonable stoppage of contractual services rendered by the Orderer in favor of the Contractor,
  - b) execution of the subject of specified work incompatibly with design documentation, despite an earlier written warning stating the violation and calling for an immediate stop to these activities,
  - c) flagrant violation of safety rules in force, despite an earlier written warning stating the violation and calling for an immediate stop to these activities,
  - d) the contractor has the right to withdraw from the contract of specified work in case of delay of 80 days in payment of the invoice.
2. In case the Contractor withdraws from the contract without the interference from the Orderer, the Contractor shall be entitled to the price in the amount of works executed, reduced by eventual sanctions applied under the agreement.
3. In the event of cancellation or unreasonable termination by the Orderer, the Orderer shall pay the Contractor for the documented cost of purchased and afforded material and services within the execution of specified work up to 40 days after invoice approval.
4. The Parties have agreed on the possibility of terminating the contract in the form of three months' notice. The termination shall be in writing and the notice period begins on the first day of the new calendar month of serving the notice to the other side.

The criterion of recognising an agreement as a significant one is exceeding by it of 10% of bounds pertaining to the Issuer's equity capital (the Issuer's equity capital amounts to 1,358,213 thou PLN, in compliance with data included in the published report for the third quarter of 2011) and fulfillment of the criteria set forth in Par.2 Cl.1 Item 44) and Par.2 Cl.2 of Regulation of the Minister of Finance dated 19 February 2009 on current and periodic information (...). In the past 12 months the Issuer's subsidiaries signed with this customer and its subsidiaries agreements amounting altogether to 163,887 thou PLN (including this one). The highest value agreement from among all the agreements signed in the past 12 months is the agreement the Issuer informs in this current report that also includes information relating to the

highest value agreement set forth in Cl.9 Items from 1) to 7) of the Minister of Finance Regulation dated 19 February 2009 on current and periodic information (...). Legal basis for publishing: Cl.5 Par.1 Item 3 in relation with Cl.2 Par.2 and Cl.9 of the Minister of Finance Regulation dated 19 February 2009 on current and periodic information transmitted by issuers of shares and conditions of recognizing as equivalent the information required by legal regulations of a country that is not a member country (*Dz.U. z 2009, Nr 33 poz.259 ze zmianami*).