

CURRENT REPORT FILED WITH THE POLISH FINANCIAL SUPERVISION AUTHORITY IN WARSAW

DATE: March 31st 2023

Subject: [Update on Jaworzno project – settlement agreement made with TAURON Wytwarzanie \[Current Report No. 27/2023\]](#)

Text of the report:

The Management Board of RAFAKO S.A w restrukturyzacji (in restructuring) (the “**Company**”) – further to the Company’s (i) Current Report No. 9/2023 of February 7th 2023 announcing that in the course of the mediation process before the Arbitration Court at the Office of the General Counsel to the Republic of Poland (the “**Arbitration Court**”), an agreement was reached on February 7th 2023 (the “**Agreement**”) between the Company, Mostostal Warszawa S.A. of Warsaw (“**Mostostal**”; the Company and Mostostal jointly – the “**Contractor**”), E003B7 Sp. z o.o. of Racibórz, a wholly-owned subsidiary of the Company (the “**Subsidiary**”), and TAURON Wytwarzanie S.A. of Jaworzno (“**TAURON Wytwarzanie**”), and (ii) Current Report No. 16/2023 of February 28th 2023 announcing that the final terms of the settlement agreement between the Contractor, the Subsidiary and TAURON Wytwarzanie had not been agreed upon by February 28th 2023 and that the Contractor, the Subsidiary and TAURON Wytwarzanie were continuing negotiations and mediation before the Arbitration Court to agree on the final terms of the settlement agreement, (iii) Current Report No. 18/2023 of March 7th 2023 announcing that on March 7th 2023 the Contractor, the Subsidiary and TAURON Wytwarzanie executed Annex 1 to the Agreement (“**Annex 1**”) in the course of the mediation process before the Arbitration Court, (iv) Current Report No. 21/2023 of March 20th 2023 announcing that the Contractor, the Subsidiary and TAURON Wytwarzanie reached an agreement on the terms of the future settlement, and (v) Current Report No. 22/2023 of March 21st 2023 announcing that on March 21st 2023 another annex, subsequent to Annex 1, was executed in connection with the Agreement (“**Annex 2**”) – announces that on March 31st 2023 the Contractor, the Subsidiary and TAURON Wytwarzanie concluded, following mediations before the Arbitration Court, a settlement agreement concerning Contract No. 2013/0928/Ri for the development of new coal-fired generation capacities at TAURON Wytwarzanie S.A. – construction of a 910 MW supercritical power generation unit at the Jaworzno III Power Plant – Power Plant II: steam boiler, turbine generator set, main building, electrical and I&C systems (the “**Settlement Agreement**” and the “**Contract**”) and executed an annex to the Contract (the “**Contract Annex**”),

Pursuant to the material provisions of the Settlement Agreement, the Parties thereto, without deciding on the validity of their respective positions and claims, agreed that:

1. Subject to the Settlement Agreement taking effect, TAURON Wytwarzanie represents that it reduces all its claims against the Contractor and the Subsidiary, related directly or indirectly to the Contract, including the claims set out in the call for payment dated January 11th 2023 referred to in the Company’s Current Report No. 1/2023, to PLN 240,000,000.00 (two hundred and forty million zlotys) (the “**Call Amount**”);
2. TAURON Wytwarzanie will make a demand for payment of the Call Amount under the performance bond for the Contract;

3. Until April 24th 2023, given the effectiveness of the Agreement (taking into account Annex 1 and Annex 2), TAURON Wytwarzanie will not be entitled to make claims against the guarantors who issued the performance bonds for the Contract to make payments under the performance bonds in excess of the Call Amount;
4. TAURON Wytwarzanie will pay the Company and the Subsidiary a total of PLN 65,054,995.19 (sixty-five million, fifty four thousand, nine hundred and ninety five złotych, 19/100), consisting of:
 - i. A VAT-exclusive amount of PLN 32,542,295.19 (thirty-two million, five hundred and forty-two thousand, two hundred and ninety-five złotych 19/100) as payment due under the survey of the work performed, which will be paid – taking into account the settlement of advance payments and prior payments, following which the VAT-exclusive amount of PLN 18,020,950.51 (eighteen million, twenty thousand, nine hundred and fifty złotych, 51/100) remains to be paid – regardless of the fulfilment of the conditions precedent to the Settlement Agreement;
 - ii. PLN 8,500,000.00 (eight million five hundred thousand złotych, 00/100) on account of a share in the compensation due from the insurer as compensation related to the incident which occurred on February 9th 2020 at the Contract construction site, which will be paid by TAURON Wytwarzanie upon payment of compensation from the insurer by way of an agreement or by July 15th 2023 if as a result of an act or omission by TAURON Wytwarzanie no agreement is executed with the insurer by June 30th 2023;
 - iii. A VAT-exclusive amount of PLN 14,012,700.00 (fourteen million, twelve thousand, seven hundred złotych, 00/100) on account of deliveries and transfer of rights to the documentation, to be paid after the Settlement Agreement takes effect;
 - iv. A VAT-exclusive amount of PLN 10,000,000.00 (ten million złotych, 00/100) on account of indemnification of TAURON Wytwarzanie by the Company for any claims that may be raised by the subcontractors and further subcontractors of the Company and the Subsidiary, to be refunded if TAURON Wytwarzanie is nevertheless obliged to make any payments to those subcontractors and further subcontractors, in the amount of such payments to the subcontractors and further subcontractors, which amount is to be paid after the Settlement Agreement takes effect;
5. With effect from the date of signing the Settlement Agreement, the scope of the Contract will be limited to the work completed to date and the Contract will be terminated for the remainder of its scope, the final Contract Price will be reduced accordingly to a VAT-exclusive amount of PLN 4,658,972,354.86 (four billion, six hundred and fifty-eight million, nine hundred and seventy-two thousand, three hundred and fifty-four złotych, 86/100);
6. With effect from the date of Contract termination, i.e., the date of signing the Settlement Agreement, the Contractor will withdraw the claim against TAURON Wytwarzanie to provide a payment guarantee – within the meaning of Article 649¹ of the Civil Code – for the Contractor's remuneration under the Contract;
7. With effect from the date the Settlement Agreement enters into force, the Contractor and the SPV will be released from their obligations under the technical guarantees provided under the Contract, and such release will also be effective with respect to

circumstances that come to light during the period between the signing of the Settlement Agreement and its entry into force;

8. with effect from the date the Settlement Agreement enters into force – the Parties will waive all their mutual claims, excluding the relationship between the Company and the Subsidiary, and the Company and the Subsidiary will waive their claims against TAURON Polska Energia S.A. of Katowice – this waiver does not apply to claims resulting directly from the Settlement Agreement;
9. With effect from the execution date of the Settlement Agreement, the Company and the Subsidiary will agree for their subcontractors and further subcontractors to enter into direct cooperation with TAURON Wytwarzanie;
10. The Settlement Agreement will enter into force – with the exception of the provisions that, pursuant to the Settlement Agreement, take effect irrespective of the Settlement Agreement's entry into force – subject to the following conditions precedent:
 - i. The parties to the Settlement Agreement obtain, by April 20th 2023, corporate approvals for the conclusion of the Settlement Agreement and for the terms and conditions set out therein, with the proviso that, for purposes of the Settlement Agreement, the Company's corporate approvals include, in addition to approvals from its governing bodies, a statement by MS Galleon GmbH, or the execution by the Company and MS Galleon GmbH of an agreement, on MS Galleon GmbH's continued interest in proceeding with the Company's investor process;
 - ii. The Company obtains, by April 20th 2023, the consent of the Company's court supervisor appointed by the decision of the District Court in Gliwice, 12th Commercial Division, dated March 8th 2023, to enter into the Settlement Agreement and to the terms and conditions set out therein;
 - iii. The Company's General Meetings adopts, by April 24th 2023, all resolutions on the increase of the Company's share capital, as specified in the Company's Current Report No. 23/2023 on convening an Extraordinary General Meeting of RAFAKO S.A. w restrukturyzacji (in restructuring) for April 17th 2023, which condition is reserved in favour of the Company;
 - iv. An agreement is concluded by April 24th 2023 between the Company, the Subsidiary, TAURON Wytwarzanie and the guarantors who issued the performance bonds for the Contract, concerning payment of the Call Amount;
 - v. An agreement is concluded by April 24th 2023 between the Company, the Subsidiary and the guarantors who issued performance bonds for the Contract, regarding mutual settlements between the Company, the Subsidiary and the guarantors, and the guarantors accept the Settlement Agreement, with the proviso that the entry into force of the Settlement Agreement and the aforementioned agreement will be conditional on the Company entering into a settlement with Ignitis Grupe AB or its subsidiaries regarding settlement of these parties' mutual claims in connection with the project and the dispute referred to in the Company's Current Report No. 60/2022 of August 5th 2022;
 - vi. The guarantors who have issued performance bonds for the Contract pay the Call Amount to TAURON Wytwarzanie by April 25th 2023;

- 11.** In the event that any of the conditions precedent set out in Section 10 above are not fulfilled within the time limits indicated therein, the Settlement Agreement will not enter into force, with the exception of those provisions that, pursuant to the Settlement Agreement, take effect prior to its entry into force.

Pursuant to the Annex to the Contract, the Contract was declaratorily amended (including with respect to its termination) in accordance with the Settlement Agreement.

Legal basis:

Article 17(1) of the Market Abuse Regulation – inside information.

Radosław Domagalski-Łabędzki – President of the Management Board

Dawid Jaworski – Vice President of the Management Board