

CURRENT REPORT FILED WITH THE POLISH FINANCIAL SUPERVISION AUTHORITY

DATE: December 28th 2020

Subject: [Position of RAFAKO S.A. w restrukturyzacji regarding notices to terminate contracts relating to construction of Kędzierzyn Compressor Station and Goleniów-Płoty gas pipeline section received from Operator Gazociągów Przesyłowych GAZ-SYSTEM S.A. \[Current Report No. 66/2020\]](#)

Text of the report:

Further to Current Report No. 64/2020 of December 15th 2020 announcing the receipt by the Company from Operator Gazociągów Przesyłowych GAZ-SYSTEM S.A. (the “**Employer**”) of notices to terminate the contract for the project to construct the Goleniów-Płoty section of the DN 700 Szczecin-Gdańsk gas pipeline (the “**Goleniów Contract**”) and the contract for the project to construct the Kędzierzyn Compressor Station (the “**Kędzierzyn Contract**”), the Management Board of RAFAKO S.A. w restrukturyzacji (in restructuring) of Racibórz (the “**Company**”) presents the Company’s position regarding the Employer’s notices to terminate the Goleniów and Kędzierzyn Contracts.

The Company challenges in full the Employer’s right to terminate the Goleniów Contract, and is of the opinion that the charging of a contractual penalty by the Employer and its claim for refund of the advance payment are ineffective.

In addition, as regards the charging of a contractual penalty of PLN 20,512,308.19, the Company contends – out of caution, should the penalty not be waived altogether – that the penalty is grossly overcharged and therefore needs to be reduced to a reasonable amount under Art. 484.2 of the Civil Code. The circumstances cited by the Employer to justify the contractual penalty have already been the basis for charging contractual penalties in the past, which precludes re-imposing on the Company a contractual penalty arising from the same factual circumstances. The Company also notes that it is inadmissible to charge the contractual penalty against the contract price payable to the Company or to enforce its payment against a performance bond pursuant to the Act on Special Measures Related to Preventing, Counteracting and Combating COVID-19, Other Infectious Diseases and Related Crisis Situations of March 2nd 2020 (the “**Act**”).

The Company also contests the effectiveness of the Employer’s claim for refund of the advance payment of PLN 12,000,000.00, as it has already been settled in accordance with the provisions of the Goleniów Contract in the amount of PLN 2,239,893.66, net of VAT (PLN 2,755,069.20, inclusive of VAT). Notwithstanding the foregoing, the Company also points out that the Employer is not entitled to demand refund of the advance payment paid by the Company as – even assuming that the Employer’s claim for refund of the advance payment is valid – the amount would be covered by the scheme of arrangement as part of the ongoing restructuring proceedings concerning the Company.

The Company also voices reservations regarding the Employer's right to terminate the Kędzierzyn Contract.

In the case of the contractual penalty of PLN 33,916,160.35 charged when terminating the Kędzierzyn Contract, the Company contends that the penalty is grossly overcharged and therefore needs to be reduced to a reasonable amount pursuant to Art. 484.2 of the Civil Code, and notes that it is inadmissible to charge the contractual penalty against the contract price payable to the Company or to enforce its payment against a performance bond pursuant to the Act.

The Company also points out that the Employer is not entitled to demand refund of the advance payment of PLN 20,750,100.00 paid by the Company as the claim is covered by the scheme of arrangement as part of the ongoing restructuring proceedings concerning the Company.

Legal basis:

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

Mariusz Zawisza, President of the Management Board

Jarosław Pietrzyk, Vice President of the Management Board