

CURRENT REPORT FILED WITH THE POLISH FINANCIAL SUPERVISION AUTHORITY IN WARSAW

DATE: November 12th 2021



Subject: [Execution of term sheet for an agreement to invest in the Company \[Current Report No. 43/2021\]](#)

Text of the report:

Further to Current Report No. 38/2021 of October 7th 2021, announcing the receipt by the Company of a letter of intent, and Current Report No. 42/2021 of November 10th 2021, announcing the receipt by the Company of an annex to the letter of intent, the Management Board of RAFAKO S.A. of Racibórz (the "**Company**") announces that on November 12th 2021 the Company, Fundusz Inwestycji Polskich Przedsiębiorstw Fundusz Inwestycyjny Zamknięty Aktywów Niepublicznych of Warsaw (the "**Fund**") and Polimex Mostostal S.A. of Warsaw ("**Polimex**") executed a term sheet for an agreement to invest in the Company (the "**Term Sheet**").

The Term Sheet defines the initial terms and conditions of: (i) acquisition by the Fund and Polimex (jointly, the "**Investors**") of the Company shares currently held by PBG S.A. w restrukturyzacji (in restructuring) of Wysogotowo ("**PBG**") (7,665,999 shares) and Multaros Trading Company Limited of Limassol ("**Multaros**") (34,800,001 shares) (the "**Share Acquisition**") and (ii) provision by the Investors of funding to the Company, of up to PLN 31,000,000.00 (the "**Provision of Funding**"), following the closing of the Share Acquisition.

The key provisions of the Term Sheet are as follows:

1. As part of the Share Acquisition, the Investors will acquire all shares in the Company held by PBG and Multaros, with the proviso that the total number of Company shares to be acquired from PBG and Multaros and currently held by the Investors may not exceed 33% of all shares in the Company's share capital outstanding at that time;
2. As part of the Provision of Funding, the Investors will provide the Company with funding of up to PLN 31,000,000.00 in the form of a loan, bonds or similar instruments, with the proviso that the final amount will be determined subject to satisfactory due diligence and estimation of the Company's liquidity needs and that the details of the Provision of Funding will be specified in the relevant funding agreement;
3. The funds made available to the Company by the Investors as part of the Provision of Funding may be used exclusively for development purposes of the Company after the closing of the Share Acquisition and may not be used to repay or secure the Company's existing financial debt;
4. The following conditions precedent apply:
 - i. the Company and Nowe Jaworzno Grupa TAURON Sp. z o.o. of Jaworzno sign an annex, memorandum of understanding or another agreement mitigating the risks associated with the Jaworzno Project, on terms acceptable to the Company and the Investors;
 - ii. the Company and Nowe Jaworzno Grupa TAURON Sp. z o.o. of Jaworzno sign an annex, memorandum of understanding or another agreement defining the terms of ordering or settlement of additional work, as well as the terms of sale of spare parts and the tool shop of the Jaworzno Project, on terms acceptable to the Company and the Investors;
 - iii. the Company makes financial settlements, or enters into an agreement with Operator Gazociągów Przesyłowych GAZ-SYSTEM S.A. of Warsaw whereby the Company and Operator Gazociągów Przesyłowych GAZ-SYSTEM S.A. of Warsaw make financial settlements, concerning the Goleniów-Ploty and Tłocznia Kędzierzyn-Koźle projects, on terms acceptable to the Company and the Investors;
 - iv. the Company signs with JSW KOKS S.A. of Zabrze an annex mitigating the risks associated with the Radlin project, on terms acceptable to the Company and the Investors;

- v. the Company makes financial settlements or enters into an agreement with PGE Górnictwo i Energetyka Konwencjonalna S.A. of Bełchatów, whereby final financial settlements between the Company and PGE Górnictwo i Energetyka Konwencjonalna S.A. of Bełchatów are confirmed, on terms acceptable to the Company and the Investors;
 - vi. the findings of the first part of the Company's due diligence review are satisfactory;
 - vii. the Investors reach an agreement on the price and settlement mechanism with PBG and Multaros;
 - viii. the Company signs with the Guarantor Banks agreements concerning, *inter alia*:
 - a) disbursement (subject to the closing of the Share Acquisition) of financing of up to PLN 150,000,000.00 under new credit and guarantee facilities, enabling the Company to continue operations, eliminating a funding gap, and providing financing for the Company's growth plans until 2023;
 - b) release of security interests over certain assets of the Company in order to improve the Company's working capital position using proceeds from the sale of the assets (PLN 40,000,000.00 or more) and provision of guarantees enabling the release of security deposits/amounts retained by the Company's trading partners in an amount of PLN 20,000,000.00 or higher by January 15th 2022;
 - c) enabling cash flows from the Jaworzno Project contract to be transferred to the Company (including during the performance of the contract);
 - ix. such package and level of security interests under the Provision of Funding is agreed as is satisfactory to the Investors – agreements on the Provision of Funding and creating security interests in connection with the Provision of Funding are signed, and applications to enter the relevant security interests in the pledge register are submitted (if such entry is required);
 - x. PBG and Multaros obtain the corporate or court approvals necessary for the execution of agreements on the sale of Company shares;
 - xi. the Company's General Meeting conditionally appoints a majority of the Company's Supervisory Board members designated by the Investors, with the appointment to be contingent on the closing of the Share Acquisition, and on the date of closing of the Share Acquisition the term of office of such members of the Company's Supervisory Board will commence;
 - xii. the Investors complete, and are satisfied with the findings of, the second part of their due diligence review of the Company (covering, among others, key contracts performed by the Company (including the Lombok and Wilno projects));
 - xiii. the unit synchronisation phase in the Jaworzno project is reached;
 - xiv. the Investors obtain the consent of the President of the Office of Competition and Consumer Protection to the Share Acquisition;
 - xv. the Company obtains individual notification for the European Commission in respect of decision No. 12/ARP/2021 of July 9th 2021 issued by Agencja Rozwoju Przemysłu S.A. of Warsaw in case ref. no. BZR.7701.86.2020, and appropriate funding documents are executed with Agencja Rozwoju Przemysłu S.A., and the funds covered by that decision are provided to the Company;
 - xvi. in the period until May 31st 2022 there occur no adverse events which would have a material adverse effect on the Company's risk profile;
- 5. The conditions precedent set out in Section 4 above inure to the benefit of the Investors;
 - 6. The conditions precedent set out in Sections 4.i-vii above must be fulfilled and confirmed by the Investors by December 15th 2021, the conditions precedent set out in Sections 4.viii-xii above must be fulfilled and confirmed by the Investors by February 28th 2022, and the conditions precedent set out in Sections 4.xiii-xvi above must be fulfilled and confirmed by the Investors by May 31st 2022;
 - 7. The Investors are entitled to require the fulfilment of additional conditions precedent apart from those laid down in Section 4 above;
 - 8. The Investors may consider disbursing to the Company part of the Provision of Funding amount before all conditions precedent are met, provided that the Investors deem progress in meeting the conditions precedent as satisfactory.

Moreover, under the Term Sheet:

1. The Company agrees that the Company's Supervisory Board will appoint one person designated by the Investors as member of the Company's Management Board or that the Company's General Meeting will appoint one person designated by the Investors to the Company's Supervisory Board, and that an Advisory Board will be appointed to the Company's Management Board, on the terms set out in the Term Sheet;
2. The rules and timetable of the Company's due diligence review have been agreed.

The Term Sheet stipulates that it constitutes only an expression of intention of the Parties thereto and is not legally binding.

Legal basis:

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

Radosław Domagalski-Łabędzki, President of the Management Board

Maciej Stańczuk, Vice President of the Management Board