

CURRENT REPORT FILED WITH THE POLISH FINANCIAL SUPERVISION AUTHORITY IN WARSAW

DATE: March 24th 2022

Subject: Execution of Investment Agreement concerning the Company and Conditional Share Purchase Agreement [Current Report No. 17/2022]**Text of the report:**

The Management Board of RAFAKO S.A. of Racibórz (the “**Company**”), further to the Company’s Current Reports: (i) No. 65/2020 of December 22nd 2020 announcing the execution on December 22nd 2020 of a trilateral agreement between the Company, PBG S.A. w restrukturyzacji (in restructuring) of Wysogotowo (“**PBG**”) and an international financial adviser (the “**Adviser**”), where under the Adviser is to provide financial and transaction advisory services in a process to acquire an investor for the Company, in particular through the sale of 7,665,999 Company shares held by PBG (“**PBG Shareholding**”) and 34,800,001 Company shares held by PBG’s subsidiary Multaros Trading Company Limited of Limassol (“**Multaros**”, “**Multaros Shareholding**”) (the PBG Shareholding and the Multaros Shareholding are hereby referred to as the “**Shareholdings**”), and to secure direct financing for the Company, (ii) No. 12/2022 issued by the Company on February 16th 2022, announcing that the Company and PBG received a conditional offer from a reputable international investor (the “**Investor**”) to purchase the Shareholdings, as well as provide (debt) financing to the Company (the “**Offer**”), (iii) No. 15/2022 of March 2nd 2022 announcing general acceptance of the Offer by PBG, as well as an invitation to negotiate the purchase of the Shareholdings by the Investor, announces that on March 24th 2022 the following agreements were signed:

1. A Conditional Share Purchase Agreement between the Company, PBG and MS GALLEON AG of Vienna as the Investor (the “**Share Purchase Agreement**”), and
2. An Investment Agreement between the Company and the Investor (the “**Investment Agreement**”).

In accordance with the material provisions of the Share Purchase Agreement:

1. PBG agreed to directly sell the PBG Shareholding to the Investor and to indirectly sell – through the sale of all shares in the share capital of Multaros (“**Multaros Shares**”) – Multaros Shares, and the Investor agreed to purchase from PBG the PBG Shareholding and Multaros Shares (i.e., indirectly the Multaros Shareholding);
2. The total selling price of the PBG Shareholding and Multaros Shares (indirectly the Multaros Shareholding) has been agreed at PLN 28,452,220.00 (twenty-eight million, four hundred and fifty-two thousand, two hundred and twenty-two zloty, 00/100), i.e., PLN 0.67 (sixty-seven grosz) per Share, to be paid by the Investor in accordance with the Share Purchase Agreement;
3. The Investor’s obligation to acquire the PBG Shareholding and Multaros Shares (indirectly the Multaros Shareholding), as well as to perform other obligations under the Share Purchase Agreement, is conditional on the fulfilment (or the waiver by the Investor or, if applicable, the waiver by the Parties to the Share Purchase Agreement) of certain

conditions precedent to be satisfied in principle by June 30th 2022 (the majority of which may be waived by the Investor to the extent legally permissible):

- i. The Investor obtains the consent of the President of the *Office of Competition and Consumer Protection* to the acquisition of control over the Company by the Investor;
- ii. The Company ensures post-shutdown unit re-synchronisation with respect to the subject matter of Contract No. 2013/0928/Ri for the development of new coal-fired generation capacities at TAURON Wytwarzanie S.A. – construction of supercritical 910 MW generating unit at the Jaworzno III Power Plant – Power Plant II: steam boiler, turbine generator set, main building, electrical and I&C systems, signed between the Company and Nowe Jaworzno Grupa TAURON Sp. z o.o.;
- iii. The Company makes financial settlements or enters into an agreement with Operator Gazociągów Przesyłowych GAZ-SYSTEM S.A. of Warsaw regarding financial settlements relating to the contracts for the execution of Goleniów-Płoty and Tłocznia Kędzierzyn-Koźle projects, on terms satisfactory to the Investor;
- iv. The Company signs with JSW KOKS S.A. of Zabrze an annex to the contract relating to the Radlin project, on terms satisfactory to the Investor;
- v. The Company signs 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 satisfactory to the Investor;
- vi. The Company signs a contract or agreement with the institutions providing financing to the Company and its Group, concerning the refinancing or the terms of further financing of the Company and its Group, on terms satisfactory to the Investor;
- vii. The Investor completes a due diligence assessment of the Company and Multaros with a result satisfactory to the Investor;
- viii. The Company's General Meeting appoints at least one member of the Company's Supervisory Board designated by the Investor;
- ix. The Investor signs an agreement or agreements concerning: (i) purchase by the Investor of at least 50% of the total amount of all debt covered by the arrangement in the Company's restructuring proceedings, on terms satisfactory to the Investor, (ii) purchase by the Investor of at least 50% of Company shares acquired by the Company's creditors in the execution of the arrangement in the Company's restructuring proceedings, containing terms and conditions satisfactory to the Investor;
- x. The Company's Extraordinary General Meeting passes a resolution concerning: (i) a conditional increase of the Company's share capital and (ii) a reduction of the Company's share capital, on the terms set out in the Investment Agreement, as well as adopts any other resolutions required to provide financing to the Company by the Investor in accordance with the Investment Agreement;
- xi. PBG obtains the consent of its bondholders to the sale by PBG of the PBG Shareholding and the Multaros Shareholding (indirectly through the sale of Multaros Shares) to the Investor; registered pledges and other security interests over the PBG Shareholding and the Multaros Shareholding are released; and the Investor obtains a promise to release those registered pledges, given by the security agent for PBG Bonds;
- xii. A judge-commissioner appointed for PBG in the restructuring proceedings grants its consent for the sale of the PBG Shareholding and the Multaros Shareholding;
- xiii. No insolvency or liquidation proceedings or other similar actions are initiated or taken against the Company or Multaros in the period between the date of the Share Purchase Agreement and the date of acquisition of the PBG Shareholding and the Multaros Shareholding by the Investor;

- xiv. The Company and PBG sign an agreement governing their mutual settlements and the sale of PBG's shareholding in RAFAKO Engineering sp. z o.o.
4. The Investor's obligation to acquire the PBG Shareholding and Multaros Shares, as well as to perform other obligations under the Share Purchase Agreement, notwithstanding the conditions precedent referred to in Section 3 above, is also conditional on non-occurrence, until the closing of the transactions provided for in the Share Purchase Agreement ("**Transaction Closing**"), of circumstances which represent a material adverse change relating to the Company's financial condition and assets;
 5. The Company and PBG have made an undertaking towards the Investor that from the date of the Share Purchase Agreement to the date of Transaction Closing neither the Company nor PBG will take any of the actions specified in the Share Purchase Agreement, nor will any events specified therein concerning the Company or any companies of its Group occur; the undertaking does not differ from undertakings commonly made in transactions similar to the transaction contemplated by the Share Purchase Agreement;
 6. The Investor as well as the Company and PBG acting jointly may rescind (in the exercise of a contractual right of rescission) the Share Purchase Agreement in certain cases, not different from those commonly provided for in transactions similar to the transaction contemplated by the Share Purchase Agreement; this contractual right of rescission may be exercised within 12 (twelve) months of the date of the Share Purchase Agreement;
 7. The Company and PBG granted the Investor exclusive rights until the date of Transaction Closing;
 8. The Investor has the right to transfer, on the terms and conditions set out in the Share Purchase Agreement, the rights and obligations under the Share Purchase Agreement and under all other agreements concluded under or in connection with the Share Purchase Agreement to any entity of its choice.

In accordance with the material provisions of the Investment Agreement:

1. The provision of financing to the Company involves an obligation on the part of the Investor (or the entity/entities designated by the Investor) (jointly referred to as the "**Financing Provider**") to subscribe for new shares in the Company's share capital (the "**New Shares**") in the exercise of the right under the non-transferable registered subscription warrants issued free of charge, each of which will entitle the Investor to subscribe for 1 (one) New Share, created as part of a conditional increase in the Company's share capital (the "**Warrants**"), on the terms and conditions set out in the Investment Agreement (the "**Conditional Increase**");
2. The Conditional Increase will be effected on the following terms:
 - i. The Company's share capital will be conditionally increased by an amount to be agreed with the Investor and approved by the Company's General Meeting, so that it does not result in a breach of Art.448.3 of the Commercial Companies Code;
 - ii. The Financing Provider will be the only entity entitled to acquire the Warrants, with the other Company shareholders' pre-emptive rights to the Warrants and the New Shares disapplied;
 - iii. The total issue price for all New Shares will not exceed PLN 280,000,000.00 (two hundred and eighty million złoty);
 - iv. The Company will hold discussions on the Conditional Increase of the Company's share capital, including the terms of subscription for the New Shares in the exercise of rights under the Warrants, with other stakeholders in consultation with the Financing Provider and PBG;
3. The Conditional Increase will be preceded by a reduction of the Company's share capital (the "**Reduction**"), carried out in accordance with the following terms:

- i. the Company's share capital will be reduced in accordance with Art. 457.1.2 of the Commercial Companies Code to offset the losses incurred by the Company, with a simultaneous release of all existing capital reserves or statutory reserve funds of the Company (to the extent that such reserves or funds may be legally used to cover the Company's losses) and the use of capital thus obtained to offset the Company's losses;
 - ii. the Company's share capital will be reduced by reducing the par value of the Company shares to PLN 0.01 (one grosz) per Company share;
4. The Financing Provider's obligation to provide the Company with financing by subscribing for New Shares in the exercise of rights under the Warrants is conditional on the fulfilment (or the waiver by the Financing Provider or, if applicable, the waiver by the Parties to the Investment Agreement) of certain conditions precedent to be satisfied in principle by June 30th 2022 (and which may be waived by the Investor to the extent legally permissible):
 - i. Satisfaction of the conditions precedent stipulated in the Share Purchase Agreement (or their waiver by the Financing Provider or, if applicable, their waiver by the Parties to the Investment Agreement);
 - ii. Non-occurrence, in the period between the date of the Share Purchase Agreement and the Transaction Closing date, of any circumstances representing a material adverse change with respect to the Company's financial condition and assets;
 - iii. Adoption by the Company's General Meeting of resolutions concerning the Conditional Increase and the Reduction, and registration of the Conditional Increase and the Reduction by the competent registry court;
 - iv. Registration of the Warrants in the Financing Provider's account;
 - v. Performance of all transaction-related activities in accordance with the Share Purchase Agreement before the Financing Provider subscribes for all or part of the New Shares;
5. On the date when all of the transactions contemplated by the Share Purchase Agreement are completed, the New Shares will be paid for, at the discretion of the Financing Provider, through:
 - i. Payment of a cash contribution; or
 - ii. Set-off of the Company's and the Financing Provider's mutual claims, with the proviso that such payment for the New Shares may also be made partially as specified in item i. above and partially as specified in item ii. above;
6. If the Financing Provider decides to make a cash contribution to pay for the New Shares it subscribes for and pays the total issue price for those shares, the Company will repay the debt purchased by the Financing Provider and covered by the arrangement in the restructuring proceedings concerning the Company, by paying funds equal to the amount of the debt to the bank account indicated by the Financing Provider; the amount of such repayment should be equal to the total issue price received by the Company for the New Shares subscribed for by the Financing Provider;
7. If the Financing Provider decides to pay for the New Shares by way of the set-off referred to above, the Financing Provider and the Company will enter into an agreement on setting off the amount due to the Company on account of the total issue price of the New Shares subscribed for by the Financing Provider, against the Financing Provider's claims against the Company on account of the debt purchased by the Investor, covered by the arrangement in the restructuring proceedings concerning the Company and intended as payment for such shares;
8. If as a result of the subscription for the New Shares in accordance with the procedure described above the rights attached to the Warrants are not exercised in full, the Financing Provider will be entitled to subscribe for additional New Shares in accordance with its rights under the Warrants; in such a case, the payment for the New Shares subscribed for by the Financing Provider will be made in a manner agreed between the Financing Provider and the Company;

9. The Financing Provider will be obliged to subscribe for at least PLN 30,000,000.00 (thirty million złoty) worth of the New Shares (but not more than the aggregate amount of Warrants held by the Investor after the Transaction Closing) by exercising the rights under the Warrants held by the Financing Provider after the Transaction Closing (and not exercised in accordance with the procedure described above) on or before the date falling six months after Transaction Closing if:
 - i. The Company submits to the Investor a financial plan satisfactory to the Investor, setting out the Company's growth objectives and capital expenditure which the Company intends to finance through the issue of such New Shares in the exercise of the Warrants held by the Investor after Transaction Closing, and
 - ii. In the period between the Closing of the Transactions contemplated by the Share Purchase Agreement and the above date there occur no circumstances representing a material adverse change in the Company's financial condition or assets;
10. The Investor and the Company will have the right to rescind (in the exercise of a contractual right of rescission) the Investment Agreement in certain cases, not different from those commonly provided for in transactions similar to the transaction contemplated by the Investment Agreement; this contractual right of rescission may be exercised within 12 (twelve) months of the date of the Investment Agreement;
11. The Investor has the right to transfer, on the terms and conditions set out in the Investment Agreement, the rights and obligations under the Investment Agreement and under all other agreements concluded under or in connection with the Investment Agreement to any entity of its choice.

In addition, the Company has agreed to obtain corporate approvals from its governing bodies necessary for the performance of the Share Purchase Agreement and the Investment Agreement.

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