

**CURRENT REPORT FILED WITH THE POLISH FINANCIAL SUPERVISION
AUTHORITY IN WARSAW**

DATE: March 31st 2022

Subject: [Execution of settlement agreement and annex with JSW KOKS S.A. of Zabrze \[Current Report No. 19/2022\]](#)**Text of the report:**

The Management Board of RAFAKO S.A. (the “**Company**”) announces, further to (i) Current Report No. 47/2021 of December 15th 2021 announcing the execution of a preliminary agreement between the Company and JSW KOKS S.A. of Zabrze (“**JSW KOKS**”) concerning the rules of procedure for the intended mediation between them, and (ii) Current Report No. 3/2022 of January 13th 2022 announcing that the Company and JSW KOKS signed an annex to Contract No. NR/18/U/2019 of June 12th 2019 (the “**Contract**”), under which the Company is performing for JSW an investment project to construct a coke gas fired power generation unit at JSW KOKS S.A., Radlin Coke Plant, Branch of KKZ, in order to improve the energy efficiency at JSW KOKS S.A. KKZ Branch – Radlin Coking Plant (the “**Project**”), that on March 31st 2022 a settlement agreement was signed between the Company and JSW KOKS as part of mediation before the Arbitration Court at the Office of the General Counsel to the Republic of Poland (“**Mediation**”) (the “**Settlement Agreement**”), along with an annex to the Contract, signed in the performance thereof (the “**Annex**”).

The key provisions of the Settlement Agreement and the Annex (the “**Settlement Documentation**”) are as follows:

1. Confirmation that the Settlement Agreement (and thus also the Annex) has been signed to secure the Company’s and JSW KOKS’ legitimate interests and to further improve the situation related to the implementation of the Project, including to ensure that the construction of the Radlin CHP Plant being built as part of the Project is completed as soon as practicable (the “**Complete Facility**”), including its commissioning, with a concurrent intention to end the state of uncertainty and eliminate risks, precisely define the scope of works and services to be provided the Company, and prevent potential future disputes which may put at risk the completion of the Complete Facility, which also includes mutual concessions with respect to the previously disputed issues;
2. Change of the execution schedules of the Project as part of which the Complete Facility is to be constructed, and in particular change of the Contract performance schedule (the “**Schedule**”), including change of the deadline for signing the final acceptance certificate for the Complete Facility, which has been set for June 30th 2023;
3. Change of the existing payment milestones under the Agreement in connection with the circumstances specified in Sections 1 and 2 above, as well as Sections 5, 6, 7 and 8 below;

4. The Company's commitment to take steps to ensure that the final acceptance certificate for the Complete Facility is signed before the date specified in Section 2 above;
5. JSW KOKS engaging the Company to perform additional works specified in the Settlement Documentation, related to the construction of the Complete Facility, which will be part of the Complete Facility (the "**Additional Works**");
6. JSW KOKS engaging the Company to perform, besides the Additional Works, additional tasks specified in the Settlement Documentation, which are technically and technologically related to the construction of the Complete Facility, but which go beyond the scope of the previously agreed Complete Facility (the "**Additional Tasks**"), such additional tasks to be subject to final acceptance other than the final acceptance of the Complete Facility. The Company has undertaken towards JSW KOKS to provide a guarantee in accordance with the Contract, as well as to transfer to JSW KOKS the rights over intangible assets in accordance with the Contract, in relation to the Additional Tasks.
7. Payment by JSW KOKS to the Company, on the terms and dates specified in the Settlement Documentation, of PLN 29,965,525.61 (twenty-nine million, nine hundred and sixty-five thousand, five hundred and twenty-five złoty, sixty-one grosz), VAT-exclusive – as part of an increase of the Company's fee under the Contract, as referred to in Section 9 below – due to the events which had occurred in connection with the implementation of the Project before the signing of the Settlement Agreement, including in particular those beyond the control of the Parties to the Contract, such as the SARS-CoV-2 pandemic and its effects, including, but not limited to: **(i)** the absence of employees or other persons involved or likely to be involved in the performance of the Contract, **(ii)** difficulties in the delivery of necessary products, components or materials, and **(iii)** a material increase in the costs of the Project due to developments on the construction services market and changes in prices of construction materials (including with regard to signing contracts with and remuneration expected by subcontractors). This obligation is undertaken in conjunction with the Company's representation to the effect that the payment of the first portion of the above amount, as agreed by the Parties and specified in the Settlement Documentation, satisfies all of the Company's claims against JSW KOKS on account of the events that had occurred in connection with the implementation of the Project before the date of signing the Settlement Agreement, which, however, does not preclude the Company's right to receive the full amount specified at the beginning of this Section;
8. The Company's obligation, as part of the settlement concessions, to provide for the benefit of JSW KOKS works and services specified in the Settlement Documentation, other than Additional Works and Additional Tasks, as part of the fee due to the Company under the Contract, as specified in the Settlement Documentation, i.e., without any separate fee being payable to the Company for the performance of those works and services.
9. Increase of the Company's fee under the Contract in connection with the circumstances set out in Sections 5 – 8 above, to the aggregate amount of PLN 447,396,525.61 (four hundred and forty-seven million, three hundred and ninety-six thousand, five hundred and twenty-five złoty, sixty-one grosz), VAT exclusive, i.e., by PLN 150,595,525.61 (one hundred and fifty million, five hundred and ninety-five

thousand, five hundred and twenty-five złoty, sixty-one grosz), VAT exclusive, which includes:

- i. The fee for Additional Works of PLN 20,450,000.00 (twenty million, four hundred and fifty thousand złoty), VAT exclusive;
 - ii. The fee for Additional Tasks of PLN 100,180,000.00 (one hundred million, one hundred and eighty thousand złoty), VAT exclusive;
 - iii. The amount referred to in Section 7 above;
- 10.** The Company's commitment to adjust the amount of the performance bond granted in the performance of the Contract to the amount of the Company's increased fee under the Contract and to provide security for Additional Tasks;
- 11.** Transfer by the Company to JSW KOKS, as part of the settlement concessions, of the ownership title to material machinery or equipment related to the performance of the Project, in accordance with the terms and conditions set out in the Settlement Documentation, earlier than agreed in the Contract;
- 12.** Granting JSW KOKS additional rights in the event of non-performance or improper performance of the Contract by the Company, including granting JSW KOKS the contractual right to rescind the unperformed part of the Contract— in the event of failure to complete the stages of the Schedule explicitly specified in the Annex;
- 13.** Representations by the Parties to the Contract, subject to Section 14 below, that the Settlement Agreement completely and exhaustively determines the rights and obligations of the Parties to the Contract in relation to the matters which were the subject of their talks or correspondence, including as part of the Mediation, in the period until the date of execution of the Settlement Agreement;
- 14.** Agreement that if all of the following circumstances arise, namely: (i) the Company completes the construction of the Complete Facility within the time limit specified in the Settlement Documentation, (ii) the Company completes Additional Works and Additional Tasks within the time limits specified in the Annex, and (iii) the Company's investor process is successfully completed, in the agreement/arrangement with at least one party to the letter of intent to which JSW KOKS is a party, JSW KOKS will not seek from the Company any contractual penalties disputed by the Parties for the period prior to the execution of the Settlement Agreement, with the proviso that if all of the events specified above do not occur, this shall not deprive the Company of the possibility of challenging such penalties.

The entry into force of the Settlement Documentation was made subject to the following conditions:

- a) In the case of the Settlement Agreement:
 - i. The Parties to the Agreement obtain corporate approvals necessary for the execution and entry into force of the Settlement Agreement and the Annex;
 - ii. The Company submits to JSW KOKS documents confirming the creation of security, meeting the requirements of the Settlement Documentation;

iii. The competent court of general jurisdiction issues a final approval of the Settlement Agreement

b) In the case of the Annex: the Settlement Agreement enters into force;

Moreover, it was agreed that in the period from the date of execution of the Settlement Agreement until the date of its entry into force the Parties to the Contract will perform their obligations under the Settlement Documentation, to the extent necessary to meet the deadlines set out in the amended schedules for the implementation of the Project as if the Settlement Documentation entered into force, which is of key importance to the ability to meet the deadline set out in Section 2 above.

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