

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

DATE: July 1st 2022

Subject: [Signing of statement concerning preliminary guarantee facility for the Company \[RB 46/2022\]](#).

Text of the report:

The Management Board of RAFAKO S.A. of Racibórz (the “**Company**”), further to:

1. Current Report No. 18/2014 of April 17th 2014 announcing the execution, between E003B7 sp. z o.o. of Racibórz (a wholly-owned subsidiary of the Company) (“**SPV**”) as the principal and Bank Gospodarstwa Krajowego of Warsaw (“**BGK**”), Powszechna Kasa Oszczędności Bank Polski S.A. (“**PKO BP**”) and Powszechny Zakład Ubezpieczeń S.A. (“**PZU**”) as the guarantors, of an agreement to provide bank and insurance guarantees to the SPV (the “**Agreement**”) in connection with Contract No. 2013/0928/Ri for ‘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’ (the “**Jaworzno Project**”) as well as the provision by the Company of a surety in respect of the SPV’s obligations under the Agreement;
2. Current Report No. 3/2016 of February 25th 2016 announcing the execution of an annex to the Agreement, pursuant to which mBank S.A. of Warsaw (“**mBank**”) acceded to the Agreement as a guarantor;
3. Current Report No. 17/2022 of March 24th 2022 announcing the execution of a conditional share purchase agreement between the Company, PBG S.A. w restrukturyzacji (in restructuring) of Wysogotowo and MS GALLEON AG of Vienna (the “**Investor**”) (the “**Share Purchase Agreement**”) and of an investment agreement between the Company and the Investor (the “**Investment Agreement**”);
4. Current Report No. 19/2022 of March 31st 2022 announcing the execution, between the Company and JSW KOKS S.A. of Zabrze, of a settlement agreement (the “**Settlement Agreement**”) concerning Contract NR/18/U/2019 of June 12th 2019 (the “**Radlin Project**”) and a related annex (signed in the performance thereof) (the “**Annex**”);

announces that on July 1st 2022 the Company, the Investor, the SPV, BGK, mBank, PKO BP and PZU (BGK, mBank, PKO BP and PZU are collectively referred to as the “**Financing Parties**”) signed a statement to confirm the indicative term sheet for a guarantee facility to be provided to the Company (the “**Statement**”; the “**Term Sheet**”).

The Statement contains the Term Sheet as an appendix. In the Statement:

1. the Parties represented that the Term Sheet lays down the key terms and conditions of a guarantee facility for the Company (and members of its Group);

2. the Investor represented that the terms and provisions of the Term Sheet have been indicatively agreed upon between the Company, the SPV and the Financing Parties to its satisfaction;
3. the Parties represented that the terms and conditions set forth in the Term Sheet are indicative and its provisions do not constitute an obligation or an offer by the Financing Parties to provide any guarantee facility or to change the terms of any existing guarantee facilities.

The Term Sheet applies to both the existing guarantee facility covered by the Agreement (the “**Existing Facility**”) and the Company’s new guarantee facility (the “**New Facility**”). With respect to:

1. the Existing Facility, the Term Sheet provides that:
 - i. the Financing Parties shall not be required to issue at the request of the Company or its subsidiaries any new guarantees under the Agreement other than the existing advance payment guarantee and performance bond issued by the Financing Parties in connection with the Jaworzno Project;
 - ii. the Company shall not be required to create any new security in connection with the existing guarantees referred to in item (i) above;
 - iii. any commissions accrued under the Agreement and outstanding as at the closing date of the transactions contemplated by the Share Purchase Agreement shall be cancelled subject to the closing of the transactions contemplated by the Share Purchase Agreement, except for the commission referred to in item (iv) below and current commissions compliant with the Agreement;
 - iv. the Financing Parties shall give their consent for the SPV to pay the Company, as consideration for providing a surety in respect of the SPV’s obligations under the Agreement, an amount equal to the amount of security for the Radlin Project in connection with the Settlement Agreement and the Annex, which may not be higher than PLN 16,000,000.00 (sixteen million złoty), in order for the Company to create security under the Settlement Agreement and the Annex, with the Financing Parties being entitled to receive a commission on account of their consent in the amount of PLN 4,000,000.00 (four million złoty);
2. the New Facility the Term Sheet provides that:
 - i. the New Facility shall comprise a revolving guarantee facility for bid bonds, advance payment guarantees, performance bonds and warranty bonds, under which the Financing Parties may refuse to provide a guarantee to the Company only in specified circumstances, with the proviso, however, that in the case of the Company’s subsidiaries and the Company’s consortium partners, the Financing Parties shall have the right but not the obligation to provide a guarantee;
 - ii. the total amount committed under the New Facility shall be PLN 200,000,000.00 (two hundred million złoty), with the availability of the full committed amount depending on the reduction of the amount/expiry of the existing guarantees issued by the Financing Parties in connection with the Jaworzno Project upon lapse of their respective terms;
 - iii. the committed amount referred to in item (ii) above shall be made available in two tranches: the first tranche of PLN 50,000,000.00 (fifty million złoty) and the second supplementary tranche of up to PLN 200,000,000.00 (two hundred million złoty) after the date of reduction of the full amount of the performance bond issued in connection with the Jaworzno Project or its conversion into a post-completion guarantee;

- iv. making the amount committed under the New Facility available to the Company shall be subject to the following conditions precedent:
 - a) the Financing Parties are provided with a financial projection of the Company's equity confirming that the Company has permanently regained a positive shareholders' equity, particularly as a result of financial support from the Investor;
 - b) the Company causes the transactions contemplated in the Share Purchase Agreement to be closed;
 - c) the Company causes its shareholders' equity to return to a positive value on or around the closing date of the transactions contemplated by the Share Purchase Agreement;
 - d) Nowe Jaworzno Grupa TAURON sp. z o.o. confirms that the closing of the transactions contemplated by the Share Purchase Agreement satisfies the condition for waiver by that entity of the disputed contractual penalties against the Company (as mentioned in the Company's Current Report No. 45/2021 of December 2nd 2021);
 - e) confirmation is provided that the security under the New Facility has been effectively created;
 - f) a representation is received from the Investor that all conditions precedent were satisfied (or waived by the Investor, as the case may be) by the closing date of the transactions contemplated by the Share Purchase Agreement, other than making the amount committed under the New Facility available to the Company, in accordance with the provisions of the Share Purchase Agreement and the Investment Agreement;
 - g) the commission referred to in Section 1(iv) above is paid in accordance with the provisions of the Term Sheet;
 - h) the Investor (or other entity designated by the Investor and accepted by mBank, including the Company) acquires mBank's arrangement claims against the Company and the Company shares subscribed for by mBank in connection with the conversion of mBank's arrangement claims into Company shares are introduced to trading on a regulated market;
- v. the New Facility shall be secured by the following:
 - a) assignment by way of security of rights and receivables under the contract for which a given guarantee has been issued;
 - b) a representation by the Company on voluntary submission to enforcement under Art. 777 of the Code of Civil Procedure;
 - c) cash collateral equal to or lower than 10% of the nominal amount of a guarantee, which shall be increased to 15% if the Company obtains the restructuring support being the subject matter of Decision of Agencja Rozwoju Przemysłu S.A. No. 12/ARP/2021 of July 9th 2020;
 - d) security created over the Company's assets (a pledge over business), ranking second to the security created in favour of PKO BP as a financing party under the agreement of February 7th 2012 for multi-purpose credit facility No. 94 1020 1026 0000 1302 0235 3282.

The other terms and conditions of the proposed facility set forth in the Term Sheet do not generally differ from customary market terms applied to the type of guarantee facilities as the guarantee facility contemplated by the Term Sheet.

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