

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

DATE: August 5th 2022

Subject: [Partial arbitral award received by Company regarding dispute relating to contract for 'Construction of biomass-fired co-generation unit comprising fluidised bed boilers, biomass storage and feeding systems, and flue gas treatment system' as part of construction of new CHP plant in Vilnius. \(Current Report No. 62/2022\)](#)

**Text of the report:**

The Management Board of RAFAKO S.A. of Racibórz (the “**Company**”) – further to the Company’s: (i) Current Report No. 28/2016 of September 29th 2016 announcing the execution of a significant conditional contract with UAB VILNIAUS KOGENERACINĖ JĖGAINĖ (the “**Employer**”) for the ‘Construction of a biomass-fired co-generation unit comprising fluidised bed boilers, biomass storage and feeding systems, and a flue gas treatment system’ as part of construction of a new CHP plant in Vilnius (the “**Contract**”), (ii) Current Report No. 53/2020 of October 5th 2020 announcing the Company gave a notice of impossibility/termination to the Employer, (iii) Current Report No. 54/2020 of October 6th 2020 announcing that the Company received from the Employer a notice to rescind the Contract, (iv) Current Report No. 55/2020 of October 8th 2020 announcing that the Employer submitted to KUKE Korporacja Ubezpieczeń Kredytów Eksportowych S.A. (“**KUKE**”) and Generali Towarzystwo Ubezpieczeń S.A. (“**Generali**”) demands for payments under performance bonds in the total amount of EUR 14,965,000.00, (v) Current Report No. 57/2020 of October 20th 2020 announcing that the Company received from KUKE a pre-litigation call for payment of the guaranteed amount of EUR 11,972,000.00 in connection with KUKE having paid out to the Employer the guaranteed amount of EUR 11,972,000.00, (vi) Current Report No. 62/2020 of November 18th 2020 announcing that the Company received from Generali a call for payment of the guaranteed amount of EUR 2,993,000.00 in connection with Generali having paid out to the Employer the guaranteed amount of EUR 2,993,000.00, and (vii) Current Report No. 7/2021 of January 21st 2021 announcing the commencement of negotiations to settle the dispute arising under the Contract amicably in parallel with the ongoing arbitration proceedings initiated by the Company against the Employer – announces that on August 5th 2022 the Company received a partial award dated August 5th 2022 issued by an arbitral tribunal operating under the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce in the case Ref. File V 2020/119 (the “**Award**” and the “**Tribunal**”).

The Management Board of the Company would like to clarify that, as mentioned above, the Award is partial and decides only some of the issues listed below, also being preliminary in nature and deciding on the principle of responsibility, which applies mainly to item 7 and 10 below – these issues will be the subject of the final award to be issued by the Tribunal later in the proceedings.

The Award states that:

1. the Contract was neither invalid or unenforceable but also that there was no material breach of the Contract by the Employer, and that, consequently, the Company was not entitled to rescind the Contract on October 5th 2020;

2. on October 6th 2020, the Employer was entitled to rescind the Contract pursuant to the provisions of the Contract invoked in the Award;
3. the certificate of takeover of completed works signed by the Company on February 4th 2020 is invalid;
4. the Employer is entitled to receive from the Company the documentation related to the Contract specified in the Award; consequently, the Company has been ordered to deliver the documentation to the Employer;
5. the Employer is entitled to receive contractual penalties for the Company's delay in the performance of the works specified in the Contract;
6. on October 6th 2020, the Employer was entitled to demand payment under guarantees from KUKÉ and Generali, as referred to in the Company's Current Report No. 57/2020 of October 20th 2020 and Current Report No. 62/2020 of November 18th 2020, and, consequently, the Company's claim for the reimbursement of the amounts paid by KUKÉ and Generali to the Employer has been dismissed;
7. the Company has liability for damages towards the Employer, but the Award does not state whether the Employer has suffered a loss, and it does not specify the amount of any such loss or the scope of redress that would need to be provided by the Company as part of the damages, leaving these issues to be decided in the final award;
8. the Company is not entitled to invoke the provisions of the Contract that limit its liability (the limitation of liability clause);
9. all the other claims and counterclaims, objections and pleas put forward by the parties for the Tribunal to decide at the present stage of the proceedings, have been dismissed;
10. the costs of arbitration will be decided in the final award.

As regards item 6 above, the Management Board of the Company would like to note that the decision issued on the matter in the Award does not require any payments to be made by the Company to the Employer given the payments already made by KUKÉ and Generali to the Employer, as announced by the Company in Current Report No. 57/2020 of October 20th 2020 and Current Report No. 62/2020 of November 18th 2020. Furthermore, the Company upholds its position expressed in these Current Reports that the claims of KUKÉ and Generali against the Company related to the payments made to the Employer are covered by the arrangement reached in the course of the Company's restructuring proceedings and approved by a final decision of the court.

The Management Board would like to further clarify that the Award (as an arbitral award) is final with respect to those issues which were decided in the Award without the reservation they would be resolved in the final award. However, the Company has the right to seek the annulment of the Award, as an arbitral award, before the Svea Court of Appeal in Stockholm, or to apply for a declaration of invalidity of the Award. The Company will decide whether or not to apply for these measures after it has thoroughly analysed the statement of reasons for the Award.

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