



Polarcus Limited  
c/o Polarcus DMCC  
P.O. Box 283373  
UNITED ARAB EMIRATES

**OUR REFERENCE**  
21/6358

**YOUR REFERENCE**

**DATE**  
23.06.2021

Dear Sir/Madam

## Decision on violation charge

### 1. Introduction

Reference is made to Finanstilsynet's (the Financial Supervisory Authority of Norway) preliminary decision and notice of violation penalty to Polarcus Limited (Polarcus, the company) of 7 June 2021, of the Public Administration Act of 10 February 1967 (PAA) section 16. Finanstilsynet has not received any response from the company.

### 2. Legal basis

Pursuant to the Norwegian Securities Trading Act of 29 June 2007 no 75 (STA) section 21-3 subsection (2) Finanstilsynet may impose a violation charge if a listed company violates the statutory deadline for publishing its annual report.<sup>1</sup> As far as the conditions for imposing a violation charge against a company, PAA section 46 apply, cf. STA section 21-9 subsection (2). The first provision states in the first subsection, first sentence:

"When a statute prescribes that administrative sanctions may be imposed against an enterprise, such sanction may be prescribed even if no individual person is at fault."<sup>2</sup>

The PAA section 46 subsection (2) and STA section 21-14 states factors that may be taken into regard when deciding whether an administrative sanction shall be imposed on an enterprise and in the individual assessment of the sanction. Finanstilsynet may have regard to, among others, the gravity of the breach, fault, the economic capacity of the enterprise and whether the enterprise could have prevented the offence.

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<sup>1</sup> An incorrect reference has been made to the provision on violation fees in Finanstilsynets letter of 7 June 2021. Transitional rules issued in Regulations 24 February 2021 no 540 shall not be used because the deadline for fulfilment was 30 April 2021 and thus after 1 March 2021. Amendments to the Act of 21 June 2019 no. 41 are therefore used in the following. The rules that establish the duty are the same as before.

<sup>2</sup> Despite the wording of the provision, Finanstilsynet finds that subjective guilt must have been exercised, but that ordinary negligence is sufficient.

As stated in the notice, the deadline for publication of the annual report is according to STA section 5-5 subsection (1) at the latest four months after the end of each financial year, i.e. 30 April 2021. Publication must be in conformity with STA section 5-12 subsection (1).

### 3. Factual background

According to the stock exchange announcements from Polarcus, the company is in provisional liquidation and joint provisional liquidators to the company was appointed 8 February 2021 by the Grand Court of the Cayman Islands. Oslo Børs imposed a suspension of trading in Polarcus and related instruments at the request of the company as stated in stock exchange announcement 9 March 2021. The company is still suspended. Polarcus completed the restructuring of the company 30 April 2021 according to stock exchange announcement the same date. The board of Directors resigned 4 May 2021. There is no information in the financial calendar on when the company expect to publish the report.

### 4. Finanstilsynet`s assessment

#### 4.1 Basis for violation charge

According to Finanstilsynet`s information, the annual report for 2020 has not yet been published. This constitutes a clear violation of the requirements of the reporting requirements under STA section 5-5 subsection (1). Finanstilsynet finds that the objective conditions under STA section 21-3 subsection (2) for imposing a violation penalty on delayed financial reporting are met.

When assessing whether the subjective conditions are met, Finanstilsynet has taken into account the stock exchange announcements from Polarcus as mentioned in section 3. Finanstilsynet emphasizes that listed companies are expected to exercise a high level of due care in fulfilling their obligations to the market in a timely manner. Finanstilsynet cannot see any relevant excuses for the delay. The management of the company must take all necessary measures to ensure that the annual report can be published within the time limit. Finanstilsynet therefore finds that the company acted negligently. On this background Finanstilsynet finds that both the objective and subjective conditions under STA section 21-3 subsection (2) for imposing a violation penalty, are met.

#### 4.2 Assessment of whether a violation charge should be imposed

Finanstilsynet finds that the delay is manifest and severe and thus deems it necessary to impose a violation charge under section 21-3 subsection (2).

Publication of periodic financial information is one of the basic duties imposed on listed enterprises. It is assumed that a listed company has sufficient internal control, expertise and resources to be able to carry out the periodic financial reports.

It is Finanstilsynet's opinion that accurate and timely financial information is one of the fundamental duties listed companies are required in relation to the market. This information is crucial for market participants and investors' decisions, and thus rate trends in the stock. In the interest of a well-functioning market, it is necessary to react in this case.

#### 4.3 Assessment of the size of the violation charge

As described above, correct and timely financial reporting is one of the most important and essential obligations of listed companies, which issuers are expected to be familiar with and align their activities with. According to Finanstilsynet's practice, the size of the violation charge is linked to the market value of the company's listed instruments as of 1 January the year the financial report is to be publicly disclosed. However, Finanstilsynet will make an assessment on a case-by-case basis. Circumstances that Finanstilsynet may have regard to are addressed in section 2 (legal basis).

The size of the violation penalty is measured on the basis of an overall assessment of the individual circumstances in the case and previous practice. As far as previous practice is concerned, reference is made to:

<https://www.finanstilsynet.no/rapportering/finansiell-rapportering/offentlige-brev---rapportering/>

#### 5. Finanstilsynet's decision

Based on the facts described above, Finanstilsynet hereby imposes an administrative fine of NOK 208000 on Polarcus Limited for non-compliance with STA section 5-5 subsection (1). The legal basis for the decision is STA section 21-3 subsection (2).

This decision may be appealed within three months of its receipt. Any appeal shall be sent to Finanstilsynet. The appeal authority is the Ministry of Finance. The Public Administration Act, Sections 18 and 19 on the parties' right to acquaint themselves with the documents in the case, applies.

Administrative fines are collected by the Norwegian National Collection Agency on behalf of the Norwegian Tax Administration. In cases where the decision is not appealed, the Norwegian National Collection Agency will submit a payment request immediately after the deadline for appeal has expired. In cases where the decision is appealed, the request is sent after the appeal has been decided by the Ministry of Finance. The Norwegian National Collection Agency's deadline for payment is three weeks after the invoice has been sent.

On behalf of Finanstilsynet

Anne Merethe Bellamy  
Deputy Director General

Jan Aastveit  
Acting Head of Section

*This document has been electronically approved and does not require handwritten signatures.*