

Polarcus Limited - Violation of Oslo Rule Book II - Delisting of bonds from the Oslo Stock Exchange

1. Introduction and summary

The matter relates to whether the bonds with ISIN NO0010680150 and NO0010714389 (together the “**Bonds**”) are no longer suitable for listing on Oslo Stock Exchange (the “**Exchange**”) and accordingly shall be delisted, cf. section 2.11.2 (1) of Oslo Rule Book II – Issuer Rules (“**Rulebook II**”). The Issuer of the Bonds is Polarcus Limited (the “**Company**”).

As a result of the insolvency of the Company, which has been followed by an official liquidation process, based on Cayman Island law, the Company’s shares were delisted by the Exchange on 9 July 2021, however the Bonds are as of the date of this document still listed. The Company is currently subject to an orderly wind-down organized by official liquidators. The Company’s management and board of directors are no longer involved in the running of the Company and their responsibilities have ceased.

The Company has failed to publish the two most recent mandatory financial reports in accordance with Rulebook II. Neither the audited annual report for 2020 nor the half-yearly report for 2021 have been published by the Company in accordance with section 6.3.1 of Rulebook II. The official liquidators confirm that no further financial reports will be prepared for the Company and support a delisting of the Bonds.

Nordic Trustee, the bondholders’ representative, does not object a delisting of the Bonds.

On this basis the Exchange has decided to delist the Bonds with effect from 28 December 2021.

Under section 2 below, the Exchange will give an account of the factual circumstances of the case. The legal basis for the delisting is set out in section 3. Section 4 presents the Company’s account of the case and the Exchange’s assessment of the case is found in section 5.

2. The factual circumstances of the case

2.1 About the Company

The Company was founded in 2008 in United Arab Emirates. It provided seismic data acquisition services and multi-client library data as well as seismic data imaging to help energy companies find oil and gas reserves offshore. The head office was in Dubai and regional offices located around the world. The Company’s shares were delisted from the Exchange due to insolvency and a liquidation process in July 2021, but the Bonds remained listed on the Exchange.

2.2 About the Bonds¹

ISIN:	NO0010680150	NO0010714389
Ticker:	PLCS02	PLCS03
Issue date:	7 June 2013	8 July 2014
Security:	Senior unsecured, negative pledge	Senior unsecured
Initial amount:	USD 95 million	NOK 350 million
Current outstanding amount:	USD 15,2 million	NOK 62 million

¹ Information from www.stamdata.com

The Bonds were issued in 2013 and 2014 respectively and the loan agreements have been amended twice since then. In January 2021, Nordic Trustee, the bondholders' representative, declared an event of default in the Bonds in relation with 26 January announcement from the Company, which is mentioned in section 2.3 below. This is the most recent announcement in relation with the Bonds. According to www.stamdata.no, 1 January 2025 is the new maturity date for the outstanding principal of the Bonds.

2.3 The process towards liquidation of the Company

On 26 January 2021 the Company announced the reception of default and enforcement notices under their bank facility agreements. These notices constituted events of default under the loan agreements for the Bonds. Based on this announcement, the Exchange decided to place the Company in the Recovery Box² until further clarification regarding a financial solution could be obtained³.

On 2 February 2021 the Company announced that their lenders no longer supported the continuance of the business and some vessels were instructed to sail to safe locations to initiate sales processes. The Company stated their intention to co-operate with the lenders on ending current operations safely. Also, a notice of termination of employment for all group employees was communicated⁴.

On 9 February 2021 the Company announced the appointment of provisional liquidators after having filed an application for this with the Grand Court of Cayman Islands. The provisional liquidators mandate was to work alongside the Board to pursue a restructuring in the interests of all creditors. They were authorized to take all necessary steps to develop and propose a restructuring of the Company's financial indebtedness with a view to make compromises or arrangements with the creditors⁵.

On 29 March 2021 the provisional liquidators filed a report with the Grand Court of Cayman Island where the ambition to complete negotiations with secured creditors and maximize returns to the creditors was stated. A decision on an eventual liquidation of the Company would be taken later in the process. The Company also stated that no Q4-2020 report would be released⁶.

On 4 May the Company announced that all members of Company's the board of directors had resigned with immediate effect. The Exchange decided to place the Company in the Penalty Bench⁷ due to the failure to publish an audited annual report for 2020 within the deadline⁸.

On 21 June the Company stated that the provisional liquidators had concluded that the Company was unable to pay its debts as it fell due, and it would be in the best interest of the Company to initiate official liquidation⁹.

On 25 June 2021, the Grand Court of Cayman Island decided an official liquidation of the Company and official liquidators were appointed. Their role was to oversee the orderly winding down of the Company, including a delisting of the Company's shares from the Exchange¹⁰.

² Oslo Børs may decide to allocate a security to the Recovery Box if the issuer is subject to circumstances that make the pricing of the securities particularly uncertain, cf. section 2.10.2 (1) of Rulebook II

³ Stock Exchange announcement: <https://newsweb.oslobors.no/message/523181>

⁴ Stock Exchange announcement: <https://newsweb.oslobors.no/message/523595>

⁵ Stock Exchange announcement: <https://newsweb.oslobors.no/message/524092>

⁶ Stock Exchange announcement: <https://newsweb.oslobors.no/message/529239>

⁷ Oslo Børs may decide to allocate a security to the Penalty Bench if the issuer fails to comply with the rules, cf. section 2.10.3 (1) of Rule Book II

⁸ Stock Exchange announcement: <https://newsweb.oslobors.no/message/532060>

⁹ Stock Exchange announcement: <https://newsweb.oslobors.no/message/536857>

¹⁰ Stock Exchange announcement: <https://newsweb.oslobors.no/message/536857>

On 30 June 2021 the Exchange received an application for delisting of the shares and on 6 July 2021 it was decided to delist the Company's shares with effect from 12 July 2021¹¹.

2.4 The Company's financial reporting

The Company has not published any financial reports since the Q3 -2020 report which was released on 29 October 2020. No audited financial information has been published since the 2019 audited annual and sustainability report which was published on 2 April 2020.

As stated above, the Company announced on 29 March 2021 that the Q4-2020 report would not be released, however this report would not have been required by Rulebook II.

As of the date of this document, the Company has not prepared or published an audited annual report for the financial year 2020. The deadline for publishing the audited annual report is at the latest four months after the end of the financial year or immediately after approval by the board of directors or equivalent corporate body of the Company, cf. section 6.3.1 (1) and 6.3.5 (1) and (2) of Rulebook II.

As of the date of this document, the Company has not published the half-yearly report for 2021. Pursuant to section 6.3.1 (2) and 6.3.4 (1) of the Rulebook II the Issuer must make public a half-yearly report for the first six months of the financial year and make the report public as soon as possible after the end of the relevant period, but at the latest two months thereafter.

3. Legal background

3.1 Annual and half-yearly financial reporting

Pursuant to the Rulebook II section 6.3.1 (1) and (2) the issuer must make public an annual report and a half yearly report for the first six months of the financial year in accordance with section 5-5 and 5-6 of the Securities Trading Act and related regulation and in accordance with the provisions laid down in these rules.

Further, pursuant to the Rulebook II section 6.3.4 (1) the half-yearly financial report shall be made public as soon as possible after the end of the relevant period, but at the latest two months thereafter. Section 6.3.5 (1) and (2) of Rulebook II states that the annual financial report shall be made public at the latest four months after the end of the financial year or immediately after it has been approved by the board of directors or equivalent corporate body.

3.2 Delisting:

Rulebook II section 2.11.2 addresses delisting of financial instruments on the initiative of the Exchange:

(1) Oslo Børs may delist financial instruments issued by an Issuer if they no longer satisfy the exchange's conditions or rules. However, Oslo Børs cannot delist a financial instrument if this can be expected to cause material disadvantage for the owners of the instruments or for the market's duties and function.

(5) Before a decision on delisting is made, the question of delisting and which measures if any that could be implemented in order to avoid delisting shall be discussed with the Issuer. (...)

¹¹ Stock Exchange announcement: <https://newsweb.oslobors.no/message/537596>

(6) The resolution to delist shall state the date on which delisting will be implemented. When fixing the date for delisting, consideration shall be given inter alia to allowing the Issuer a reasonable period to adjust to the fact that its financial instruments will no longer be admitted to trading. Oslo Børs shall immediately publish a resolution of delisting and inform Finanstilsynet (...).

4. The Company's account of the matter

On 3 December 2021 the Exchange sent the preliminary decision to delist the Bonds to the official liquidators asking for their comments. The official liquidators responded on 7 December 2021: *"The joint official liquidators (JOLs) have been overseeing an orderly wind down of the Company since their appointment on 21 June 2021. The JOLs will not be preparing any further financial reports on behalf of the Company and having already approved and effected the de-listing of the Company's shares from the Exchange, the JOLs also support the de-listing of the bonds detailed in section 2.2 above."*

5. The Oslo Stock Exchange's assessment

5.1 Introduction

The Exchange understands that the Company is subject to extraordinary circumstances with an ongoing liquidation process. The Company has no operations or employees and the official liquidators appointed by the court has the ultimate responsibility for the Company until the liquidation process is completed and it is no longer a legal entity. If the Bonds remain listed on the Exchange, the rules for timely financial reporting applies with limited possibilities for granting exemptions, regardless of the state of the Company. This is the basis for the assessment of the listing status of the Bonds presented below.

The Exchange's assessment is twofold. Firstly, the Company's violations of the financial reporting requirements of Rulebook II are considered serious per se. The seriousness of these violations is amplified by the official liquidators' confirmation that no further financial accounts will be prepared and published by the Company going forward.

Secondly, the insolvency of the Company has caused the resignation of all board members and termination of employment for all group employees, including management. The officially appointed liquidators have become responsible for handling all enquiries on behalf of the Company. The Exchange also consider this relevant in relation with a delisting of the Bonds.

5.2 Failure to comply with the requirements for financial reporting

As accounted for, the Company has not published the audited annual report for 2020 or the half yearly report for the first six months of 2021, which is two violations of Rulebook II section 6.3.1. The deadline to publish the annual report was end of April 2021, and as of the date of this document the audited annual report is still not published. The deadline to publish the 2021 half-yearly report was end of August 2021. The Exchange's understanding is that there is no progress towards publication of the annual report for 2020 or the half-yearly report for the first six months of 2021.

Going forward, the Exchange emphasizes that the official liquidator has confirmed that no further financial reports will be prepared or published for the Company¹². The Exchange also realizes that the Company no longer has any staff to carry out financial reporting and it is outside the mandate of the official liquidators to ensure financial reporting compliant with Rulebook II going forward.

¹² Attachment 1: E-mail mail correspondence between the Exchange and the official liquidator 15 – 18 November 2021. Also confirmed in e-mail as of 7 December 2021, cf. section 4 above.

From the Exchange's perspective the financial reports of an insolvent Company subject to a wind down process with no operations or assets would be of limited value for the bondholders or other market participants. It is difficult to see the value for any market participant from keeping the Bonds listed to keep the Company subject to the financial reporting obligations in Rulebook II in such a situation.

5.3 No roles with the Company to ensure compliance with Exchange rules

Upon the appointment of the official liquidators in June 2021, the powers of management and directors ceased, and they are no longer involved in the running of the Company. All board members have resigned their positions and there are no longer any management with the company and all group employments have been terminated as described in section 2.3 above. All responsibilities are placed with the official liquidators. The Exchange consider that the current situation implies that there are no roles with the Company prepared to take the responsibility to ensure compliance with Exchange rules, going forward.

5.4 Other

For the sake of good order and to facilitate for any concerns from the bondholders, the Exchange has also asked Nordic Trustee to comment on a possible delisting of the Bonds. In an e-mail dated 11 October they confirmed that they would not reject a delisting of the Bonds¹³.

5.5 Concluding remarks

The Exchange consider it not relevant to discuss possible measures that could be implemented to rectify the situation when taking into consideration that the Company has been subject to a formal process organized by the Grand Court of Cayman Island since February 2021 which has ultimately led to a liquidation of the Company. Exchange considers that a delisting of the Bonds is not expected to cause material disadvantage to the bondholders.

The Exchange has accordingly reached the conclusion that the Bonds are not suitable for listing on the Exchange. The Exchange has on 10 December 2021 made the following decision:

“The Oslo Stock Exchange considers that the bonds issued by Polarcus Limited with ISIN NO0010680150 and NO0010714389 are not suitable for listing due to ongoing violations of the Oslo Stock Exchanges rules on financial reporting. The Oslo Stock Exchange has decided to delist the bonds from the Oslo Stock Exchange pursuant to section 2.11.2 (1) of Rulebook II with effect from 28 December 2021. The last listing date will be 23 December 2021.”

¹³ Attachment 2: E-mail correspondence between the Exchange and Nordic Trustee 8-11 October 2021