

Guidance from Spotlight regarding notice of a general meeting

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Background

The highest decision-making body in a Swedish limited liability company is the general meeting. The Swedish Companies Act (Sw. Aktiebolagslagen 2005:551) ("**ABL**") stipulates together with the articles of association of the company how this body shall be convened and on what occasions it shall be convened. Similar regulations exist in other jurisdictions in other countries, but varies as regards form and detail. This guide addresses listed companies that are obliged to act in compliance with ABL.



Table of contents

Notice of a general meeting 4

 What shall a notice to a general meeting contain?..... 4

 How shall a general meeting be convened? 6

 When shall a general meeting be convened? 7

 After the general meeting – statement from the general meeting 7

Notice of a general meeting

What shall a notice to a general meeting contain?

A notice to a general meeting shall contain information about the time and place for the general meeting together with information about the conditions for the shareholders' right to participate in the general meeting. The notice shall also contain a proposed agenda for the general meeting. In the proposed agenda, the board of directors shall clearly state the matters that will be addressed at the general meeting. The matters shall be numbered. The main content of each matter shall be stated, unless the matter is of minor significance or only a formality (e.g. opening of the meeting, election of chairman, etc.). When a matter regards a change of the articles of association, the main contents of the proposed change shall always be included in the notice. The same applies to e.g. decisions on new share issues, reverse splits, dismissals or appointments of new board members - such matters cannot be considered to be formalities and their main content shall therefore be included.

ABL stipulates that the notice shall include an instruction on how the shareholders should act in order to be able to participate in the meeting through a proxy, postal vote and electronic means, if it is possible to participate in any of these ways. The law stipulates that it must be stated in the company's articles of association that proxies may be collected by the company's board of directors for such a procedure to be applied. The law also stipulates that shareholders may exercise their voting rights by post if this is accepted according to the company's articles of association. However, due to Covid-19 temporary exemption rules have been introduced by Act (2020:198) on temporary exemptions to facilitate the conduct of general meetings and meetings in associations. This act states that it is neither necessary to state in the notice of the general meeting nor to stipulate in the articles of association that voting by proxy/post is accepted for the company to be able to apply such procedures. Instead, it is sufficient that the proxy/post form is published on the company's website at least one week before the day of the meeting and kept available there to the date of the meeting, together with information on how shareholders shall use these procedures for participation.

The law prescribes that limited liability companies shall hold at least one general meeting per year.¹ This general meeting is called *ordinary general meeting* or *annual general meeting* and shall be held within six months after the end of each financial year. At this meeting, the board of directors shall present the annual report and the auditor's report.² At the annual general meeting the shareholders shall decide on the adoption of the profit and loss account and the balance sheet³ of the company, allocation of the company's profits or losses, discharge from liability for the board of directors and the chief executive officer, and other matters to be addressed by the general meeting pursuant to the Swedish Companies Act (SFS 2005:551).

Where the board of directors considers that there are reasons for conducting a general meeting prior to the next ordinary general meeting, it shall convene an *extraordinary general meeting*. The board of directors shall also convene an extraordinary general meeting where an auditor of the company or owners of not less than one-tenth of all shares in the company demand in writing that such a meeting should be convened in order to address a specific matter.

¹ The articles of association may stipulate that the company shall hold more ordinary general meetings per year.

² In parent companies obliged to prepare group accounts, group accounts and auditors' report for the group shall also be presented.

³ In parent companies obliged to prepare group accounts, consolidated profit and loss account and consolidated balance sheet shall also be adopted.

All companies listed on Spotlight are so-called CSD companies, which means that each company's articles of association contain a clause stating that the company's shares shall be registered in a central securities depository register pursuant to Act (1998:1479) on Central Securities Depositories and Financial Instruments (CSD clause). This means that additional requirements must be taken into account in the notice procedure and that additional information shall be included in the notice, for example information on by which date a shareholder needs to be included in the share register for the general meeting in order to be able to participate in the meeting. This day falls six business days before the general meeting and is called the record date of the general meeting. Only those who own shares in the company as of this day have the right to participate in the general meeting. The company shall order the share register from Euroclear as soon as the board of directors has determined and announced the date of the general meeting. Such an order from Euroclear shall be made no later than 28 calendar days prior to the annual general meeting and no later than 14 calendar days prior to the extraordinary general meeting.

The notice to the general meeting shall also state the last day for a shareholder to notify his/her intention to participate in the general meeting. That day may not be a day earlier than the fifth weekday prior to the general meeting.

The share register for the general meeting shall, according to ABL, be available to the shareholders at the general meeting but does not have to be publicly available. The share register shall refer to the circumstances six business days prior to the general meeting and has to take into account nominee-registered shares that has been temporarily entered into the share register no later than four business days prior to the general meeting. The share register for the general meeting shall be archived by the company for ten (10) years.

Proposals of changes to the management

If the company intends to appoint a new board member, a brief presentation of that person shall be included in the notice of the general meeting together with his/her relevant qualifications for the assignment.

If a new board member is appointed, Spotlight will conduct a review of the person. The same applies for changes of chief executive officers. The review of the person includes a questionnaire and an extract from the criminal records. The purpose of the review of the person is to ensure that the executive's historical or current affairs are not of such a nature that they could harm the public's confidence in the company, Spotlight or the securities market in general.

Proposals of incentive programmes and private placements/directed share issues to company executives

If the notice includes a proposal of a new issue where the preferential rights of the existing shareholders not shall be observed and the existing shareholders hence not shall have the right to subscribe pro rata to the number of shares they own or in accordance with the provisions of the articles of association and the persons who instead shall be entitled to subscribe for shares, warrants or convertible instruments are members of the board of directors, the chief executive officer of the issuing company or other employees of the issuing company, or another company within the same group as the issuing company, special majority requirements needs to met at the general meeting.⁴ In such a case, the decision regarding the issue needs to be made by the general meeting or be approved by the general meeting and be supported by shareholders representing at least nine-tenths of both the shares voted and of the shares represented at the

⁴ The same majority requirements also applies if the proposed issue is directed to: a spouse/co-habitee to any of these persons, a person who is under custody of any of these persons, or a legal person over which any of these persons alone or together with any other of these persons, has a controlling influence.

general meeting. This special majority requirements shall be specified in the notice of the general meeting.

Besides the provisions in ABL, companies listed at Spotlight also needs to observe and be compliant with good practice in the securities market.⁵ With regards to private placements/directed share issues this means, in simple terms, that all types of schemes whose purpose is to achieve allotment or transfer to the persons described in the previous paragraph without applying the special majority requirement of nine-tenths at the general meeting not are permitted.

As regards incentive programmes, it follows from good practice in the securities market that incentive programmes directed to the board of directors neither shall be prepared by the board (or a part of the board) nor be proposed by the board (or a part of the board) at the general meeting. Board members shall neither participate in incentive programmes directed to members of the executive management as long as there are no special reasons to do so. Should such special reasons apply, the decision on whether or not to include board members in the incentive programme shall be a separate proposal in the notice of the general meeting.

Proposals of split, reverse split, reclassification or name change

Proposals that would lead to changes of the financial instruments admitted to trading on Spotlight if the proposals would be approved at the general meeting, should be discussed with Spotlight before such proposals are published in a notice of a general meeting. Such a change may for instance be a so-called split where the number of shares in the company increases without any changes to the share capital, a reverse split where the number of shares in the company decreases without any changes to the share capital, a reclassification where a class of shares is removed or changed, or a change of the company's name. It is important that the company contact Spotlight and presents a time plan regarding any of these kinds of changes, since these kinds of changes requires that changes are made in the trading system. The same applies if a proposal regarding payment of dividends is made and the last day for trading in the shares including right to receive dividend not is the same day as the day for the annual general meeting; a time plan needs to be presented and discussed with Spotlight as early as possible in such a case.

How shall a general meeting be convened?

Depending on the company's articles of association, companies listed at Spotlight shall convene a general meeting *either* through (i) announcement in Post- och Inrikes Tidningar and in at least one national daily newspaper specified in the articles of association and through a press release via the company's news distributor⁶, or (ii), if the company applies a so-called simplified notice procedure, through announcement in Post- och Inrikes Tidningar and by keeping the notice available on the company's website. The notice shall, where applicable, also be published in another manner specified in the articles of association of the company. In addition, the notice shall also be published by the company through a press release via the company's news distributor and the company shall also afterwards announce in a national newspaper specified in the articles of association that a notice to a general meeting has been published. If alternative (i) is applied, the board of directors shall make the accounting documents and auditor's report or copies of such documents available at the company for shareholders during a period of not less

⁵ *Good practice in the securities market* consist of rules that has been elaborated and established by trade associations within the securities market.

⁶ If a general meeting shall be convened in this way, the notice shall also be sent by post to every shareholder whose postal address is known to the company if (i) an ordinary general meeting is to be held at a time other than as prescribed in the articles of association, or (ii) the general meeting shall address a matter regarding certain changes of the articles of association, decide on whether the company shall go into liquidation, review the liquidator's final report or address the issue of whether the liquidation of the company shall cease.

than two weeks immediately prior to the annual general meeting. Copies of the documents shall be sent immediately, at no cost to the recipient, to any shareholder who so requests and states his postal address. If alternative (ii) is applied, the board of directors shall make accounting documents and the auditor's report, or copies of these documents, and all other documents that the company needs to produce before the annual general meeting, available at the company for the shareholders and on the company's website for, at a minimum, a period of three weeks up to and including the annual general meeting.

Spotlight recommends that the notice to the general meeting is disclosed by way of a press release before it is printed and published in Post- och Inrikes Tidningar and the other national daily newspaper, in order to enable any errors and insufficiencies to be corrected before the notice is printed in the newspapers. The notice shall be sent out in its entirety in the press release, it is not sufficient to only refer to the notice in a separate pdf file or similar. If the company considers that the notice convening the general meeting contains insider information, this information shall be sent out as soon as possible by way of a press release. In such a case, Spotlight recommends that the company publishes the insider information in a separate press release before the press release containing the notice is published.

When shall a general meeting be convened?

A notice to a general meeting shall be published prior to a general meeting. Notice to an ordinary general meeting in a public company shall be published no earlier than six weeks and no later than four weeks prior to the general meeting. Notice to an extraordinary general meeting at which it will be decided whether or not to change the articles of association, shall be published no earlier than six weeks and no later than four weeks prior to the general meeting. Notice to another extraordinary general meeting shall be published no earlier than six weeks and no later than two weeks before the general meeting.

After the general meeting – statement from the general meeting

As soon as possible after the end of the general meeting, the Company shall publish a statement from the meeting, containing information about the resolutions passed at the meeting. This applies even if the resolutions are in line with proposals previously made public. The information shall be published by way of a press release.