

Covid-19 and implications for AGMs

March 2020

The information contained in this presentation is of a general nature and neither can nor should be construed as a substitute for legal advice in relation to an individual matter.

The General Terms and Conditions applicable to our services are available at vinge.se

Considerations and possible approaches

The outbreak of the coronavirus disease (“**Covid-19**”) has a significant impact on people and businesses. There will also be legal consequences of Covid-19 and Vinge has received many questions from clients relating to the upcoming annual general meetings (“AGM”). As a result of the outbreak of Covid-19 and in light of the fact that the Swedish Public Health Authority (*Sw: Folkhälsomyndigheten*) has increased the risk level for the spread of Covid-19 in Sweden, the Swedish Government has decided to ban public gatherings and public events with more than 500 people until further notice.

The general view is that the ban does not apply to AGMs as they do not qualify as *public* within the meaning of the new regulation (*Sw: förordning [2020:114] om förbud mot att hålla allmänna sammankomster och offentliga tillställningar*). However, there are good reasons from a public health perspective for companies to apply the regulation in relation to forthcoming AGMs as if it was binding.

Listed companies should take steps to minimize attendance. Common measures include communicating that no refreshments will be served and that there will be no or only a very short speech by the CEO. Proxy voting should be encouraged. Some companies may wish to consider webcasting the meeting or making a CEO speech available on their websites.

It is worth noting that companies are required by law to hold their AGM for approval of the annual accounts for 2019 by 30 June 2020. Postponing the AGM until late June may be an option to consider for some companies.

According to medical expertise the spread of Covid-19 may be limited by avoiding large gatherings, minimizing the time spent in large gatherings to the extent such gatherings are necessary, and minimizing interactions with groups of people by avoiding crowded places and large shared meals. All of the below are aspects to consider in relation to the AGM in order to act in the best interest of the shareholders and to provide for a proper situation for the employees and representatives of the company.

Considerations ahead of forthcoming AGMs

TOPIC	COMMENTS	REQUIREMENTS & RECOMMENDATIONS
<p>TIMING AND PLACE</p>	<p>Companies may consider to postpone their AGM.</p> <p>If the company changes the date for the AGM, the company must also consider if the date for publication of the annual report may be changed accordingly.</p> <p>Companies may also wish to change the place of the AGM to other premises. This is possible even if notice already has been issued.</p>	<p>If the notice to the AGM already has been published, the date of the meeting may be altered as long as the time bars and disclosure requirements in, <i>inter alia</i>, the Companies Act are complied with. The company must also inform its shareholders about the original AGM being cancelled and issue a new notice.</p> <p>If the notice has not yet been published, the change of date should be communicated to the shareholders in the same way as when the previous date was communicated (by way of a press release).</p> <p>In the event of a change of premises, the company must inform its shareholders within reasonable time through a press release.</p>
<p>PARTICIPATION</p>	<p>In some larger companies, third party providers such as Euroclear and Computershare, offers a proxy service for shareholders that does not wish to attend the AGM in person.</p> <p>The Confederation of Swedish Enterprise proposed on 18 March 2020 to the Department of Justice that the Companies Act shall be temporarily amended to allow for proxy collection (<i>Sw. fullmaktsinsamling</i>) by the company or early voting (<i>Sw. poströstning</i>) even if the articles of association of the company do not provide for this. If passed, the temporary legislation will provide helpful tools to minimize attendance.</p> <p>To comply with restrictions on meeting activities and to contribute to the reduced spread of Covid-19, it may be an alternative to hold the AGM through alternative methods such as real-time webcast.</p>	<p>The company may encourage its shareholders to be represented by proxy at the AGM and inform them, for example on the company's website, of the possibility to participate via proxy through Euroclear or Computershare if applicable.</p> <p>The company may open up for board members and members of the executive management to participate via telephone or video link (such as Skype). Such measure would be a deviation from the Swedish Corporate Governance Code but is unlikely to be controversial.</p> <p>The company may wish to consider webcasting the AGM, or parts thereof, or making a CEO speech available on its website to further encourage virtual attendance at the meeting.</p>
<p>PRACTICALITIES</p>	<p>Companies should consider alternatives for their AGM when it comes to serving food and refreshments, limit the number of questions from the audience (to the extent possible under current rules) and keep the AGM as short as possible which implies that the CEO presentation will be very limited and all other agenda items are resolved on without lengthy presentations. Also, site visits or product displays in conjunction with the AGM can be cancelled.</p>	<p>The company should communicate any changes of practicalities for the AGM to its shareholders. This can be done either through the company's website or through a press release.</p>

Other implications of Covid-19

TOPIC	COMMENTS	REQUIREMENTS & RECOMMENDATIONS
<p>MARKET ABUSE</p>	<p>Listed companies have a continuous duty to immediately disclose inside information, i.e. information of a precise nature which, if made public, would be likely to have a significant effect on the company's share prices. Companies must be aware that the effects of Covid-19 on operations and profitability can potentially be considered inside information. This may be relevant, for example, if parts of the company's operations must be discontinued or a substantial contract is terminated.</p> <p>If the company's result is more generally adversely affected by Covid-19, it must also be considered whether it is necessary to issue a profit warning. In this regard it is important to consider whether the results will deviate significantly from what the company previously has announced.</p>	<p>The company needs to assess on an ongoing basis whether the effects of Covid-19 on the company constitute inside information or not and, if applicable, disclose the information as soon as possible to the market through a press release.</p>
<p>FORCE MAJEURE</p>	<p>It cannot be ruled out that epidemics, such as Covid-19, in certain circumstances may be regarded as events of force majeure. Depending on the wording of the force majeure clause and other relevant circumstances, the invoking party may be exempted from performance under a commercial agreement.</p> <p>Under Swedish law, there may be additional grounds to invoke in the absence of a force majeure clause or if a force majeure clause in the parties' agreement cannot be relied upon.</p> <p>An overall assessment must be made based on all the circumstances of the individual case.</p>	<p>Notify each force majeure event to other parties to the relevant agreement.</p> <p>If currently negotiating the wording of a force majeure clause in an agreement, consider ensuring that the provision takes into account the potential consequences of the outbreak of Covid-19.</p>

Key takeaways

1. It is possible to carry out an AGM with shareholders present and voting by video link or through other hybrid technology. However, some practicalities relating to the general meeting must be considered, for example, how to access the meeting, technical support and technical limitations. Unless the company is already very well prepared for the use of hybrid technology, we recommend companies rather to use the possibilities of proxy voting and, if deemed appropriate, making the AGM available on their websites.
2. In the current situation, with many companies experiencing that Covid-19 may result in significant challenges to conduct the general meeting at all, companies may consider postponing the AGM and other possible limitations at and around the AGM.
3. For more information regarding potential implications of Covid-19 on your operations, please visit our website www.vinge.se.
4. Vinge's capital markets lawyers currently engage in many discussions with listed companies related to these questions and have extensive knowledge around available alternatives for companies in the current situation.

Contact details

If you have any questions, please contact any of the capital markets lawyers listed below or your regular Vinge contact.

Jesper
Schönbeck



D: +46 10 614 33 21
M: +46 70 429 33 21
jesper.schonbeck@vinge.se

Charlotte
Levin



D: +46 10 614 31 68
M: +46 70 714 31 68
charlotte.levin@vinge.se

Erik
Sjöman



D: +46 10 614 55 77
M: +46 70 624 36 80
erik.sjoman@vinge.se

Dain Hård
Nevonen



D: +46 10 614 30 96
M: +46 70 714 30 96
dain.hardnevonon@vinge.se

David
Andersson



D: +46 10 614 30 02
M: +46 70 714 30 02
david.andersson@vinge.se

VINGE

STOCKHOLM GOTHENBURG MALMÖ HELSINGBORG BRUSSELS