



## ALERT SERVICE

13 MARCH 2024

ALFEN N.V.

### Agenda AGM, 9 April 2024

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1	Opening	
2A	Report of the Management Board for 2023	
2B	Remuneration Report for 2023	Advisory vote
2C	Proposal to adopt the Financial Statements for 2023	Resolution
3	Corporate governance update	
4A	Explanation of dividend and reserve policy	
4B	Explanation of reservation of profits for 2023	
5A	Proposal to discharge the members of the Management Board from liability	Resolution
5B	Proposal to discharge the members of the Supervisory Board from liability	Resolution
6	Proposal to amend the remuneration policy for the Management Board	Resolution
7	Proposal to appoint Mr B. Tans as member of the Management Board	Resolution
8	Proposal to reappoint Mr W.M. Ackermans as member of the Supervisory Board	Resolution
9A	Proposal to amend the articles of association of the Company I	Resolution
<b>9B</b>	<b>Proposal to amend the articles of association of the Company II</b>	<b>Resolution</b>
10A	Proposal to extend the designation of the Management Board as the competent body to issue shares and/or grant rights to subscribe for shares and to limit or exclude pre-emptive rights for a period of 18 month	Resolution
10B	Proposal to authorize the Management Board to cause the Company to acquire own shares for a period of 18 months	Resolution
11	Proposal to appoint PWC as the external auditor for 2025	Resolution
12	Closing	

#### CONTACT DETAILS FOR TEXT OF THIS ALERT

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## EXPLANATION

### 9B Proposal to amend the articles of association of the Company II

Alfen proposes to amend its Articles of Association to include the possibility to hold virtual-only shareholders' meetings if and when future legislation provides for such possibility.

In the explanatory notes to this voting item, Alfen remarks that "for now", the principle remains that general meetings will be held physically. However for emergency situations or other extreme situations, the company wants to include this completely virtual format. The virtual-only format may also be chosen for extraordinary general meetings with only a limited number of non-controversial agenda items. However, persons entitled to attend meetings must always have the opportunity to ask questions at a fully virtual general meeting and the board will have to answer these questions to the best of its knowledge. To achieve this, meeting attendees must be able to participate in the general meeting with sound and vision. The use of a "two-way audiovisual means of communication", such as video calling, will be mandatory. As is the case under current legislation, those entitled to attend meetings must still be identifiable and able to exercise their voting rights via the electronic means of communication.

#### Reasons for alert

- *Although the company explains that only in emergency situations or other extreme situations a virtual-only shareholders' meeting will be considered, this statement is not reflected in the Articles of Association itself and is therefore not legally binding. Dutch jurisprudence with respect to disputes on the explanation of the content of the Articles of Association is rather clear: the text of the Articles of Association is leading. This means that the possibility to hold virtual-only shareholders' meetings should be interpreted on the basis of the proposed article itself and not also on the basis of the explanatory notes to this voting item.<sup>1</sup>*
- *The company also explains that the virtual-only format may be chosen for extraordinary general meetings with only a limited number of "non-controversial agenda items". However, the company does not explain how it is determined that a particular proposal is "non-controversial". Shareholders, Management Board members and Supervisory Board members may have different views on this issue.*
- *As the bill on holding a virtual-only meeting is still under discussion in Dutch parliament, it is uncertain whether all requirements for holding a virtual-only shareholders' meeting will remain in place. Two important requirements are: i) that shareholders have the opportunity to directly participate in the meeting via a two-way audio-visual means of communication and ii) that electronic voting at the meeting is possible.*

#### **Contacts with company**

- Eumedion shared its concerns about the voting item with the company by email on February 26, 2024; the day the AGM was convened. We suggested to include the requirements for holding a virtual-only general meeting i) in the Articles of Association itself or ii) in a protocol or in regulations and to refer to such a protocol or regulations in the Articles of Association. Any change of the protocol or regulations should first be discussed with the shareholders.
- A video call with the company's secretary was held on March 4, 2024 to discuss our concerns and the company's feedback. The company's secretary remarked that the company was required by Dutch law to amend the Articles of Association this year to implement the large company regime (*structuurregime*), as the company met the 'structuurregime' requirements for the third year in a row. Alfen's legal advisor recommended to also include the virtual-only AGM option in the proposal (although as a separate voting item), as the bill on permanently allowing virtual general meetings was submitted to the Dutch House of Representatives in January 2024. She also remarked that not only Eumedion but also a proxy advisor has expressed concerns about the voting item. It is now up to the shareholders to decide.

<sup>1</sup> Reference is made to the verdict of the Enterprise Chamber of the Amsterdam Court of Appeal of 14 April 2011, *JOR* 2011/179, ECLI:NL:GHAMS:2011:BQ1233 (*ASMI*), paragraph 3.7, in the context of the remarks of the Advocate-General of the Supreme Court of the Netherlands regarding the explanation of decisions and articles of association in his conclusion dated 13 April 2010 in the *ASMI* case; see ECLI:NL:PHR:2010:BM0976, paragraphs 3.7.1 – 3.7.4.

**DISCLAIMER**

This is an alert for the participants of Eumedion with regard to a specific agenda point of a general meeting of shareholders. It is not a voting advice.